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IN THE UNITED STATES DISTRICT COURT

2

FOR THE EASTERN DISTRICT OF TEXAS

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MARSHALL DIVISION

4

PERSONALIZED MEDIA) (

5

COMMUNICATIONS, LLC,) (

6

PLAINTIFF,) (CIVIL ACTION NO.

7

) (2:15-CV-1366-JRG-RSP

8

VS.) (MARSHALL, TEXAS

9

) (

10

APPLE INC.,) (MARCH 15, 2021

11

DEFENDANT.) (9:22 A.M.

12

TRANSCRIPT OF VOIR DIRE OF THE JURY PANEL

13

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

14

UNITED STATES CHIEF DISTRICT JUDGE

15

16

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25 produced on a CAT system.)

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1 P R O C E E D I N G S

2 (Venire panel in.)

07:44:33 3 COURT SECURITY OFFICER: All rise.

07:44:34 4 THE COURT: Thank you. Be seated, please.

09:22:24 5 Good morning, ladies and gentlemen. Thank you for
09:22:33 6 being here.

09:22:35 7 My name is Rodney Gilstrap, and I am the Chief
09:22:40 8 United States District Judge for the United States District
09:22:41 9 Court for the Eastern District of Texas.

09:22:42 10 I have lived here in Marshall, Texas, since 1981.
09:22:49 11 I practiced law in this community and in this general East
09:22:53 12 Texas area for 30 years. And after practicing law for 30
09:22:56 13 years, I was nominated and confirmed as a United States
09:23:01 14 District Judge in 2011.

09:23:02 15 So I've had this job since then. I will make a
09:23:07 16 small confession to all of you. I wasn't born in Texas. I
09:23:11 17 was born in Florida. But I got here as quickly as I could.
09:23:16 18 I came to Texas at the ripe old age of 18 and enrolled as a
09:23:22 19 student at Baylor University. I finished my college work
09:23:26 20 there and stayed and went to law school at Baylor
09:23:29 21 University School of Law.

09:23:30 22 I am married. I have two grown children. And my
09:23:33 23 wife owns and operates a retail floral business here in
09:23:36 24 Marshall.

09:23:36 25 Now, I tell you all these things about myself

09:23:39 1 because in a few minutes, I'm going to ask each of you to
09:23:43 2 give the same kind of information to me about yourselves.
09:23:46 3 And I think you're entitled to know as much about me as I'm
09:23:49 4 going to shortly find out about each of you all.

09:23:52 5 We are about to engage in the selection of a jury
09:23:56 6 in a civil case involving allegations of patent
09:23:59 7 infringement.

09:24:00 8 However, before we go any further, I'd like to
09:24:06 9 briefly mention some of the public health and safety
09:24:09 10 precautions that we're going to be taking during this
09:24:12 11 trial.

09:24:13 12 Each of you should have got a letter signed by me
09:24:15 13 when you were summonsed setting forth a great number of the
09:24:19 14 public health precautions that we're going to be
09:24:22 15 implementing throughout this trial. There will be some
09:24:24 16 additional safeguards that I'll discuss with you as we go
09:24:27 17 through the trial process.

09:24:28 18 However, the eight of you that are selected to
09:24:33 19 serve as the jury in this case, and we will select eight of
09:24:36 20 you to serve as the jury, I'll be implementing these
09:24:41 21 precautions with regard to our eight-member jury.

09:24:44 22 Throughout the trial, the jury will have their
09:24:47 23 temperature taken each morning when they enter the
09:24:50 24 courthouse with a handheld thermometer. Once the jury is
09:24:56 25 seated in the jury box, I'm going to ask those eight

09:24:59 1 persons to replace these cloth or material masks that
09:25:03 2 you're wearing with either a see-through mask or a face
09:25:11 3 shield. And if you'd like to, you can wear both.

09:25:15 4 But it's an important part of the trial process
09:25:17 5 for the lawyers and the Court to be able to see the faces
09:25:21 6 of the jury, to read their expressions, to have an idea of
09:25:26 7 whether what I'm saying to you or the lawyers are arguing
09:25:29 8 in front of you is getting through or not getting through.
09:25:34 9 It's necessary for the trial to be what it should be for
09:25:37 10 the jury's faces to be seen.

09:25:39 11 So, those of you that are selected to serve as our
09:25:43 12 eight-person jury, once you're seated in the box, I'm going
09:25:46 13 to ask you to take off a mask that can't be seen through
09:25:50 14 and covers up about three-fourths of your face, and put on
09:25:54 15 a plastic replacement, either a face shield or a plastic
09:25:57 16 mask, or if you'd like to, both.

09:25:59 17 But as I say, it's critical for the process to
09:26:01 18 work as it should for the lawyers and the jury to be able
09:26:06 19 to see each other's faces.

09:26:07 20 The lawyers are going to remain with their masks
09:26:11 21 at counsel table, but whenever they speak to the jury,
09:26:13 22 whenever they examine a witness, they will go to the
09:26:16 23 podium, and at the podium, they will remove their mask, and
09:26:19 24 when they're finished, they'll put their mask back on when
09:26:23 25 they go back to counsel table. So you'll see their faces,

09:26:26 1 they'll see your faces, and the witnesses will unmask at
09:26:30 2 the witness stand, so when that part of the process goes
09:26:32 3 on, everybody will see everybody.

09:26:33 4 Also, we're going to seat our eight-person jury in
09:26:38 5 our jury box so that there'll be four people on the first
09:26:43 6 row spread out with an empty chair between you, and the
09:26:45 7 second four people will be on the back row spread out with
09:26:48 8 an empty chair between you. No two people on the jury will
09:26:52 9 be seated directly side-by-side.

09:26:54 10 Also, during the course of the trial, the Court
09:26:56 11 has ordered that the clerk's office provide lunches for the
09:27:00 12 jury in the jury room. So you are not going to leave the
09:27:04 13 courthouse and go out to the community -- into the
09:27:07 14 community and mix and mingle with the general public and
09:27:09 15 then come back to the courthouse.

09:27:11 16 Your lunches will be brought to you when we break
09:27:13 17 for lunch, and you'll have those in the jury room, so each
09:27:18 18 day when you arrive, you'll be in this building until the
09:27:21 19 end of the day when I send you home until the next day.
09:27:24 20 You won't be coming and going from the building.

09:27:27 21 Again, that's a -- one of the safety precautions
09:27:29 22 that we're going to implement.

09:27:31 23 Also, each night when the jury leaves, a special
09:27:37 24 cleaning will take place in the jury room, the jury box,
09:27:41 25 and the restrooms. There are two separate sets of

09:27:44 1 restrooms that are adjacent to the jury room. All three of
09:27:48 2 those areas will be deeply cleaned or specially cleaned
09:27:51 3 each evening in addition to the general cleaning that goes
09:27:55 4 on in the courtroom.

09:27:56 5 Also, you probably can't see them, but there are
09:27:58 6 two new air filtration systems we've added to the
09:28:02 7 courtroom. They're right in front of the bar on each far
09:28:04 8 end of the room, and they'll be filtering the air with
09:28:09 9 commercial filtration throughout the process of the trial.

09:28:12 10 So we've done, in short, ladies and gentlemen,
09:28:15 11 everything we can think of to minimize any public health
09:28:18 12 risk and to make this trial as safe as we can make it. And
09:28:22 13 I wanted to make sure you were aware of that. If there are
09:28:25 14 other precautions you need to be made aware of, I will
09:28:28 15 mention those to you as we go forward.

09:28:30 16 The key and the purpose of all of this is not only
09:28:33 17 do we have a fair and impartial trial, but we have a fair,
09:28:36 18 impartial, and a safe trial.

09:28:38 19 Now, if you'll indulge me a minute, I'd like to
09:28:43 20 briefly review with you how we came to have our American
09:28:47 21 civil jury trial system.

09:28:48 22 If you go back in ancient history and if you begin
09:28:52 23 with the Pentateuch, the first five books of the Old
09:28:56 24 Testament, you'll find that the ancient Hebrew nation
09:28:59 25 empaneled juries for the purpose of establishing property

09:29:03 1 ownership and property value. The ancient Greeks began
09:29:06 2 using a jury system about 1500 BC.

09:29:10 3 The Romans, as they did with many things, copied
09:29:14 4 the jury system from the Greeks. And it was the Romans who
09:29:18 5 brought the jury system to what is now Great Britain or
09:29:22 6 England in the 4th Century AD when they crossed the English
09:29:26 7 Channel and conquered that island.

09:29:28 8 So, the jury system came to Great Britain in the
09:29:32 9 4th Century AD. By the 12th Century AD, there had been 800
09:29:37 10 years of an active and robust jury system in England. But
09:29:41 11 in the 12th century, a tyrannical king came to the throne
09:29:46 12 of Great Britain named King John, and King John became
09:29:53 13 embroiled in various disputes with his nobles that led that
09:29:58 14 country to the verge of a civil war.

09:30:01 15 One of those disputes was King John's efforts to
09:30:03 16 do away with the right to trial by jury. That series of
09:30:06 17 disputes did not ripen into a civil war. A resolution of
09:30:09 18 all the disputes between King John and his nobles was
09:30:12 19 reached at a place in England called Runnymede where the
09:30:15 20 king and his nobles executed a document that you probably
09:30:19 21 have all heard of before. That document is called the
09:30:22 22 Magna Carta.

09:30:23 23 In fact, ladies and gentlemen, you might be
09:30:27 24 interested to know that 28 of our 50 United States have
09:30:30 25 adopted in their own state constitutions the exact language

09:30:35 1 from the Magna Carta that guarantees the right to trial by
09:30:39 2 jury.

09:30:40 3 So you can see that our founding fathers as
09:30:46 4 British colonists when they came to this country were well
09:30:51 5 learned in and familiar with the jury trial system, and
09:30:53 6 that followed them to North America when Great Britain
09:30:57 7 colonized what's now our country.

09:31:00 8 And the jury trial system flourished in colonial
09:31:06 9 America under the rule of Great Britain for over a hundred
09:31:10 10 years until another tyrannical king came to the throne of
09:31:16 11 Great Britain. This time his name was King George, III and
09:31:20 12 King George, III as you remember from American history
09:31:22 13 became embroiled with his American colonists on a great
09:31:26 14 number of issues. One of the issues amongst all of the
09:31:28 15 others was King George, III's attempt to do away with the
09:31:33 16 right to trial by jury in colonial America.

09:31:35 17 In fact, when Thomas Jefferson sat down to write
09:31:38 18 the Declaration of Independence setting forth the various
09:31:42 19 reasons and disputes and issues that necessitates -- or
09:31:47 20 necessitated our country separating from Great Britain and
09:31:51 21 forming our own independent nation, the effort to curtail
09:31:56 22 the right to trial by jury was specifically spelled out by
09:31:59 23 Thomas Jefferson in the Declaration of Independence.

09:32:02 24 If you get the Declaration of Independence and you
09:32:04 25 read it, you will find one of the complaints against the

09:32:08 1 British Crown necessitating our separation and independence
09:32:12 2 was the effort to curtail the right to trial by jury.

09:32:15 3 So you can see, ladies and gentlemen, that the
09:32:18 4 right to trial by jury was an important part of our
09:32:21 5 founding as an independent country.

09:32:23 6 And, in fact, when we gained our independence and
09:32:28 7 after several years we adopted the governing document that
09:32:32 8 is the Supreme law of the land in this country, the
09:32:36 9 Constitution of the United States, the right to trial by
09:32:41 10 jury was incorporated into the Constitution as a part of
09:32:45 11 the first 10 amendments known as the Bill of Rights.

09:32:48 12 And the Seventh Amendment to the United States
09:32:50 13 Constitution which was ratified in 1791 specifically
09:32:55 14 guarantees the right to trial by jury to resolve civil
09:32:58 15 disputes between American citizens.

09:32:59 16 So since 1791, for well over 200 years, every
09:33:07 17 American has had the right, the constitutionally guaranteed
09:33:10 18 right to resolve their civil disputes through a trial by
09:33:14 19 jury.

09:33:14 20 I will let you know that I personally view the
09:33:22 21 right to trial by jury as one of the most important rights
09:33:25 22 we have as Americans, and I hope those of you that
09:33:28 23 participate in this trial will come to see it for the
09:33:33 24 invaluable institution that it is, as you participate in
09:33:37 25 the process as we go forward.

09:33:38 1 Now, during the course of this trial, the lawyers
09:33:45 2 are going to ask you various questions as a part of their
09:33:51 3 efforts, along with the Court, to help secure a fair and an
09:33:53 4 impartial jury to hear the issues in this case.

09:33:56 5 I want you to understand when the lawyers ask you
09:33:59 6 questions, they're not trying to pry into your personal
09:34:04 7 affairs. They're not attempting to be nosy. They are
09:34:07 8 attempting to ask pertinent questions to secure -- or help
09:34:11 9 secure a fair and an impartial jury.

09:34:13 10 The important thing for each of you on the
09:34:17 11 panel -- the venire panel to remember is when these
09:34:22 12 questions will be asked there are no wrong answers. As
09:34:24 13 long as your responses to the questions asked are full,
09:34:28 14 complete, and truthful, then there are no wrong answers to
09:34:31 15 any of the questions that you'll be asked today.

09:34:33 16 Also, ladies and gentlemen, I don't expect there
09:34:39 17 to be any improper questions asked of the panel. These are
09:34:43 18 experienced trial lawyers on both sides of this case. They
09:34:46 19 understand the Federal Rules of Civil Procedure, they
09:34:49 20 understand the local rules of this Court, they understand
09:34:52 21 the Court's rulings on specific matters in this case.

09:34:56 22 If a question should be asked that I view as
09:34:59 23 improper, I will certainly stop them. But I don't
09:35:02 24 anticipate that happening. These are very experienced
09:35:04 25 trial counsel.

09:35:05 1 Also, ladies and gentlemen, I don't know if this
09:35:09 2 will happen today. It rarely does, but it's within the
09:35:13 3 realm of possibility, as they say, so I'm going to mention
09:35:16 4 it to you. If you're asked a question that you view in
09:35:20 5 your own personal mind and in your own circumstances is so
09:35:24 6 private and so personal that you're not comfortable
09:35:28 7 answering that question in front of everybody in the room,
09:35:31 8 you always have the right to simply say, I'd like to talk
09:35:35 9 about that with Judge Gilstrap.

09:35:36 10 And if you answer in that way, I will provide an
09:35:41 11 opportunity where you can answer that question outside of
09:35:44 12 the presence of everybody else on the panel.

09:35:46 13 I don't expect that to happen. It rarely comes
09:35:49 14 up, but if it should come up, you have the ability to give
09:35:53 15 that answer and I'll respond accordingly.

09:35:57 16 Now, this case is going to begin the trial as soon
09:36:03 17 as we select the jury today. So we will actually start the
09:36:06 18 case later today after the jury is selected. And I'm --
09:36:10 19 it's my expectation that the case will go throughout the
09:36:13 20 rest of this week, and it will either end on Friday of this
09:36:18 21 week, or it's possible it could carry over until Monday of
09:36:21 22 next week.

09:36:21 23 So today is the 15th, as Shakespeare would say,
09:36:27 24 beware of the ides of March, but I expect the case to
09:36:32 25 finish either on the 19th, which is Friday of this week, or

09:36:35 1 maybe -- hopefully not, but maybe on Monday, the 22nd,
09:36:39 2 which would be Monday of next week. That's an estimate,
09:36:42 3 ladies and gentlemen.

09:36:42 4 Trials are not precise scientific events. But
09:36:47 5 that's my best estimate. And I need to know at this time
09:36:51 6 if there are any of you who are on the panel that if you
09:36:56 7 were selected, you would have a serious impediment to being
09:37:00 8 able to be present throughout the trial, whether it ends on
09:37:05 9 this Friday or whether it ends on Monday of next week.

09:37:09 10 And by that, I mean if you have a surgical
09:37:12 11 procedure scheduled for yourself or a member of your
09:37:15 12 immediate family who is dependent upon you, then that's
09:37:20 13 something I need to know about. If you have
09:37:25 14 business-related travel that is prepaid and non-refundable
09:37:28 15 and you're going to jeopardize your job if you don't go,
09:37:32 16 that also qualifies.

09:37:35 17 But if there's something of a very serious nature
09:37:38 18 that would be an impediment to you being present throughout
09:37:42 19 the trial, then that's something I need to know about.

09:37:45 20 If there's anybody that believes you have a
09:37:48 21 situation like that, I need you to raise your hands,
09:37:51 22 please.

09:37:51 23 All right. I don't see any hands in the
09:37:57 24 courtroom. Thank you very much.

09:37:58 25 Now, I'm going to call for announcements at this

09:38:05 1 time in the case of Personalized Media Communications, LLC,
09:38:10 2 versus Apple Inc. This is Civil Case No. 2:15-CV-1366.
09:38:17 3 Ladies and gentlemen, not all of the respective
09:38:20 4 trial teams are here in the courtroom based on social
09:38:24 5 distancing concerns. They will be here after the jury is
09:38:28 6 selected and seated and we begin the trial, and I'm going
09:38:31 7 to allow counsel to introduce everybody on their trial
09:38:34 8 teams once the entirety of their respective trial teams are
09:38:38 9 present.

09:38:38 10 But at this time, I'm going to call for
09:38:41 11 announcements on the record from the parties. What says
09:38:43 12 the Plaintiff?

09:38:44 13 MS. DERIEUX: Elizabeth DeRieux on behalf of
09:38:46 14 Plaintiff, Personalized Media Communications, and we are
09:38:50 15 ready to proceed, Your Honor.

09:38:51 16 THE COURT: Thank you.
09:38:51 17 What says the Defendant?

09:38:53 18 MS. SMITH: Good morning, Your Honor. Melissa
09:38:55 19 Smith on behalf of Apple, the Defendant. I'm joined by
09:38:58 20 Mr. Greg Arovas, and we're ready to proceed, Your Honor.

09:39:00 21 THE COURT: Thank you.

09:39:01 22 As I told you, ladies and gentlemen, this is a
09:39:07 23 case arising under the patent laws of the United States.
09:39:11 24 And what the Plaintiff, Personalized Media Communications,
09:39:14 25 which you're going to hear referred to throughout the trial

09:39:17 1 either as simply the Plaintiff, or probably for short
09:39:21 2 you'll hear the Personalized Media Communications referred
09:39:24 3 to as PMC.

09:39:26 4 What the Plaintiff, PMC, is claiming is that a
09:39:30 5 patent which it owns was infringed by the Defendant, Apple
09:39:34 6 Inc. And you'll hear the Defendant referred to either
09:39:37 7 simply as the Defendant or Apple throughout the trial. And
09:39:44 8 the Plaintiff is seeking money damages because of that
09:39:47 9 alleged infringement.

09:39:50 10 Now, the Defendant, Apple, denies that it
09:39:52 11 infringes the Plaintiff's patent, and Apple contends that
09:39:55 12 that patent is invalid.

09:39:56 13 Now, what I've just told you is a very shorthand
09:40:01 14 version of describing the case in layman's terms.

09:40:05 15 I know you've all seen the video prepared by the
09:40:08 16 Federal Judicial Center which was played to you by the
09:40:11 17 clerk's office this morning. And having seen that, you
09:40:14 18 already know more about patent cases than most citizens do
09:40:17 19 when they arrive for jury duty.

09:40:19 20 As I mentioned, the lawyers on both sides are
09:40:22 21 about to question the panel as an effort to obtain
09:40:26 22 information to help them properly discharge their duty to
09:40:29 23 help the Court secure a fair and an impartial jury.

09:40:32 24 Again, they are not trying to pry into your
09:40:35 25 affairs unduly. They're simply trying to gain relevant

09:40:39 1 information for that important purpose. And as I
09:40:42 2 mentioned, the answers to their questions, as long as your
09:40:45 3 responses are full, complete, and truthful, there will be
09:40:48 4 no wrong answers.

09:40:49 5 One thing I do want to mention to you, ladies and
09:40:55 6 gentlemen, because it's possible the lawyers will ask you
09:40:58 7 about your ability to apply this, if you're selected on the
09:41:02 8 jury, is what's called the burden of proof.

09:41:04 9 In a patent case like this, the jury may be called
09:41:08 10 upon to apply two different burdens of proof. The jury may
09:41:14 11 apply the burden of proof known as the preponderance of the
09:41:19 12 evidence, I'll say that again, the preponderance of the
09:41:25 13 evidence, as well as a second burden of proof known as
09:41:27 14 clear and convincing evidence, clear and convincing
09:41:32 15 evidence.

09:41:32 16 Now, when responding to lawyers' questions about
09:41:37 17 your ability to apply the burden of proof, I need to
09:41:39 18 instruct you that when any party has the burden of proof on
09:41:42 19 any claim or defense by a preponderance of the evidence, it
09:41:46 20 means that the jury must be persuaded by the credible or
09:41:50 21 believable evidence that that claim or defense is more
09:41:54 22 probably true than not true. Let me say that again for
09:42:00 23 emphasis, more probably true than not true.

09:42:04 24 This is sometimes talked about as being the
09:42:07 25 greater weight and degree of credible testimony.

09:42:08 1 Let me give you an example that I hope will be
09:42:12 2 helpful. If you'll look in front of me and in front of our
09:42:16 3 court reporter, you should be able to see in the courtroom
09:42:19 4 a statue of the Lady of Justice. She's blindfolded. She
09:42:23 5 holds lowered at her right side the sword of justice.

09:42:26 6 She holds raised in her left hand the Scales of
09:42:31 7 Justice. The Scales of Justice are balanced and equal,
09:42:35 8 exactly the same. And that's where these two parties
09:42:38 9 should start out in this case, in exactly the same balanced
09:42:43 10 and equal position.

09:42:43 11 But when you think about the burden of proof,
09:42:45 12 think about over the course of the trial, the Plaintiff
09:42:47 13 will put on their case, and that evidence will go on one
09:42:50 14 side of the scales, and the Defendant will put on their
09:42:52 15 case, and their evidence will go on the other side of the
09:42:56 16 scales.

09:42:56 17 And then when all the evidence is in, all the
09:42:59 18 evidence for both parties has been placed on one side or
09:43:02 19 the other of those scales, you, the jury, will be asked
09:43:05 20 certain questions, and if the party who has the burden of
09:43:09 21 proof on that question by a preponderance of the evidence
09:43:13 22 has the scales tip in their favor, even if they tip ever so
09:43:18 23 slightly, then they have met the burden of proof of a
09:43:21 24 preponderance of the evidence, more probably true than not
09:43:29 25 true, the greater weight and degree of credible testimony.

09:43:32 1 On the other hand, the second burden of proof that
09:43:36 2 the jury will be called upon to apply is known as clear and
09:43:40 3 convincing evidence. Clear and convincing evidence, ladies
09:43:47 4 and gentlemen, means that the jury must have an abiding
09:43:52 5 conviction that the truth of the party's factual
09:43:55 6 contentions are highly probable. I'll say that again for
09:43:59 7 emphasis, an abiding conviction that the truth of the
09:44:03 8 party's factual contentions are highly probable.

09:44:08 9 This clear and convincing evidence standard is a
09:44:11 10 higher burden of proof than the preponderance of the
09:44:14 11 evidence standard.

09:44:16 12 If you think about the same example with the
09:44:18 13 statue of Lady Justice that I gave you and the evidence for
09:44:23 14 both parties is placed on their respective sides of those
09:44:27 15 scales and the scales start off equal and balanced, at the
09:44:31 16 end of the trial, if a party has the burden of proof on an
09:44:36 17 issue by clear and convincing evidence, to meet that burden
09:44:39 18 of proof those scales must tip in their favor.

09:44:42 19 And they must tip more than ever so slightly, they
09:44:46 20 must definitely tip in that party's favor. And if they do,
09:44:50 21 then that party meets the burden of proof known as clear
09:44:52 22 and convincing evidence.

09:44:52 23 Now, it's important for you to understand that
09:44:56 24 neither of these burdens of proof should be confused with a
09:45:01 25 third and separate and unrelated burden of proof that I'm

09:45:05 1 sure you've all heard about on television and in the media
09:45:08 2 called beyond a reasonable doubt.

09:45:10 3 Beyond a reasonable doubt is the burden of proof
09:45:13 4 applied in a criminal case. It has absolutely no
09:45:18 5 application whatsoever in a civil case like this. You
09:45:25 6 should not confuse clear and convincing evidence with
09:45:28 7 beyond a reasonable doubt. It is not as high a standard as
09:45:31 8 beyond a reasonable doubt. But it is a higher standard
09:45:35 9 than the preponderance of the evidence.

09:45:37 10 Now, I give you these instructions, as I say, in
09:45:41 11 case either or both sides in their questioning of you ask
09:45:44 12 about your ability to apply those two burdens of proof in
09:45:48 13 this case if you're selected to serve as a jury -- a juror.

09:45:52 14 Now, before the lawyers address the panel, I'm
09:45:57 15 going to ask each of you one at a time to now tell me as
09:46:00 16 much about you as I told you about me when I came out here
09:46:03 17 this morning. You should see on the screens in front of
09:46:06 18 you, and you may have laminated copies, I'm not sure, but
09:46:10 19 you should have access to nine specific questions that I'm
09:46:18 20 going to ask each of you to answer. And we're going to do
09:46:21 21 this in the following fashion:

09:46:22 22 Both of these Court Security Officers will be in
09:46:25 23 the gallery with two separate handheld microphones. When
09:46:31 24 it's your turn to answer those questions, if you will
09:46:34 25 stand, if you will either lower or remove your masks so I

09:46:37 1 can see the entirety of your face, and the lawyers can,
09:46:39 2 too, and if you will then take a handheld microphone given
09:46:43 3 to you by one of the Court Security Officers, then holding
09:46:46 4 that microphone close enough to where we can hear
09:46:49 5 everybody -- everybody can hear in this big room, then
09:46:51 6 answer those nine questions.

09:46:53 7 And when you've finished answering those nine
09:46:56 8 questions, hand the handheld microphone back to the Court
09:47:00 9 Security Officer, raise your mask, and have a seat. That's
09:47:03 10 how we're going to do it.

09:47:04 11 And the reason we're using two handheld
09:47:07 12 microphones is after Panel Member No. 1 answers those nine
09:47:14 13 questions, then that microphone will be cleaned and
09:47:18 14 disinfected, and the second microphone will be used with
09:47:22 15 the second person, and we'll follow that process
09:47:24 16 throughout. So none of you are going to get a microphone
09:47:27 17 that hasn't been wiped down and disinfected and cleaned
09:47:31 18 just before you get it. I wanted you to be aware of that,
09:47:34 19 as well.

09:47:35 20 And we'll do that throughout all the members of
09:47:37 21 the panel, and we'll begin with Panel No. 1, and if I can
09:47:46 22 ask the Court Security Officers to take their place, and
09:47:50 23 we'll go through and let each member of the panel answer
09:47:52 24 these nine questions.

09:48:01 25 All right. We'll begin with Panel Member No. 1,

09:48:05 1 Mr. Jones.

09:48:06 2 JUROR JONES: James Jones. I live in McLeod,
09:48:10 3 Texas. I have two kids. I work for Nix Trucking. Been
09:48:14 4 there for two years. I haul chips. High school diploma.
09:48:21 5 My wife's name is Jennifer Jones. She works for HealthCARE
09:48:24 6 Express. She works the front desk. She's been there for
09:48:29 7 right at two years. And I have no prior jury services.

09:48:32 8 THE COURT: All right. Thank you, Mr. Jones.

09:48:34 9 We'll go next to Panel Member No. 2, Ms. Haley.

09:48:40 10 JUROR HALEY: My name is Debra Haley. I have four
09:48:52 11 grown children and numerous grandchildren. I don't work
09:48:58 12 anymore other than at home. I have -- I did work as a
09:49:05 13 sitting service. I managed a sitting service. I did that
09:49:09 14 for about 10 years before I got remarried and retired.

09:49:12 15 THE COURT: And when you say "sitting service,"
09:49:14 16 you mean go into people's homes?

09:49:16 17 JUROR HALEY: For the elderly. It's for the
09:49:17 18 elderly.

09:49:17 19 THE COURT: And sitting for the elderly. Thank
09:49:19 20 you.

09:49:19 21 JUROR HALEY: I didn't do that -- I did do that
09:49:22 22 part a little bit, but mainly I just -- I managed the
09:49:25 23 office. I did the paperwork and scheduling.

09:49:27 24 THE COURT: Okay. Thank you. Please continue.

09:49:31 25 JUROR HALEY: My educational background, a high

09:49:34 1 school diploma. And my spouse's name is Revis Haley. And
09:49:38 2 he doesn't work. He's retired Army/Air Force. And he's
09:49:43 3 been retired for a few years. And I -- the only thing I've
09:49:50 4 ever done was the grand jury. I did that a couple years
09:49:53 5 ago.

09:49:53 6 THE COURT: All right, ma'am. Thank you very
09:49:54 7 much.

09:49:56 8 Next is Panel No. 3 -- Panel Member No. 3,
09:50:01 9 Ms. Goodman.

09:50:02 10 JUROR GOODMAN: My name is Beth Goodman. I live
09:50:09 11 in Daingerfield, Texas. I have one child. I am employed
09:50:15 12 by the Daingerfield Housing Authority as a clerk. I've
09:50:20 13 worked there approximately four years. I had one year of
09:50:24 14 college. My spouse's name is Jim. He is employed at the
09:50:30 15 Morris County Sheriff's Department as a jailer. He's
09:50:36 16 worked there approximately four months. And I've had one
09:50:42 17 prior jury service in a civil case.

09:50:43 18 THE COURT: And where was that prior jury service,
09:50:46 19 ma'am?

09:50:47 20 JUROR GOODMAN: In Morris County.

09:50:49 21 THE COURT: In state court? There's not a federal
09:50:51 22 court in Morris County.

09:50:53 23 JUROR GOODMAN: No, no, it was -- it must have
09:50:55 24 been state court.

09:50:55 25 THE COURT: What kind of case was it, do you

09:50:57 1 remember?

09:50:57 2 JUROR GOODMAN: It had to do with a high school
09:50:59 3 student, theft.

09:51:00 4 THE COURT: All right. Thank you very much,
09:51:02 5 ma'am.

09:51:02 6 All right. Next is Panel Member No. 4, Mr. Cox.

09:51:09 7 JUROR COX: My name is James Cox.

09:51:15 8 THE COURT: Hold the microphone a little closer,
09:51:17 9 Mr. Cox.

09:51:17 10 JUROR COX: My name is James Cox.

09:51:20 11 THE COURT: Check that and see if it's working.
09:51:22 12 I'm not hearing Mr. Cox.

09:51:28 13 JUROR COX: Hello.

09:51:29 14 THE COURT: Now you're good. Go ahead.

09:51:30 15 JUROR COX: My name is James Cox. I have two
09:51:33 16 children. Place of employment, I work for American
09:51:36 17 Electric Power as an instrumentation technician working
09:51:41 18 with computers, instruments, whatever. Been there 16
09:51:44 19 years. Educational background, high school degree --
09:51:46 20 education, Associate's degree in electronics. Spouse's
09:51:51 21 name is Sheila Cox. She works for the Daingerfield School
09:51:55 22 District as a coach and teacher. She's been there about
09:52:01 23 15, 16 years. Jury service, no, sir.

09:52:05 24 THE COURT: All right. Thank you, Mr. Cox.

09:52:07 25 Next is Panel Member No. 5, Mr. Parker.

09:52:15 1 JUROR JAMES PARKER: Hello. All right. My name
09:52:18 2 is James Parker. I live here in Marshall, Texas. I have
09:52:22 3 three children. I work for Christus Good Shepherd out of
09:52:26 4 Longview. And I've been there for 14 years. My
09:52:31 5 educational is for biomedical equipment technician.
09:52:35 6 Spouse's name is Sabrina Parker, and she just started work
09:52:39 7 for Blue Cross Blue Shield for about a week and a half. No
09:52:44 8 prior service.

09:52:44 9 THE COURT: And what do you do for Christus Good
09:52:48 10 Shepherd?

09:52:49 11 JUROR JAMES PARKER: I'm the biomedical
09:52:50 12 technician.

09:52:51 13 THE COURT: All right, sir.

09:52:52 14 JUROR JAMES PARKER: Work on the patient
09:52:53 15 equipment.

09:52:53 16 THE COURT: Thank you, sir.

09:52:54 17 And next is Panel Member No. 6, Mr. Overstreet.

09:53:01 18 JUROR OVERSTREET: My name is Arthur Overstreet.

09:53:05 19 THE COURT: Could you take that -- could you pull
09:53:06 20 that mask down, Mr. Overstreet?

09:53:09 21 JUROR OVERSTREET: Yes, sir.

09:53:10 22 THE COURT: Thank you.

09:53:11 23 JUROR OVERSTREET: My name is Arthur Overstreet.

09:53:14 24 And I lived in Camp County all my life. I have three
09:53:20 25 children. Workplace is Hiland Dairy in Tyler, Texas.

09:53:24 1 THE COURT: What do you do for them, sir?

09:53:26 2 JUROR OVERSTREET: Shipping and receiving.

09:53:30 3 THE COURT: Okay.

09:53:32 4 JUROR OVERSTREET: And high school diploma.

09:53:35 5 Pittsburg High School diploma and divorced.

09:53:40 6 THE COURT: All right. What about prior jury

09:53:41 7 duty?

09:53:42 8 JUROR OVERSTREET: Yes, sir. It's been months ago

09:53:45 9 here in Tyler -- here in Marshall.

09:53:45 10 THE COURT: In this court?

09:53:47 11 JUROR OVERSTREET: Yes, sir.

09:53:47 12 THE COURT: And you say it's been months ago?

09:53:49 13 JUROR OVERSTREET: No. It's been probably years.

09:53:51 14 THE COURT: Okay. What kind of -- do you remember

09:53:54 15 what kind of case it was?

09:53:55 16 JUROR OVERSTREET: It was a patent.

09:53:57 17 THE COURT: All right. And you served on the

09:53:59 18 jury. Did you serve as a foreperson or a member of the

09:54:04 19 jury?

09:54:05 20 JUROR OVERSTREET: Member of the jury but they

09:54:06 21 settled out of court.

09:54:06 22 THE COURT: Okay. You didn't return a verdict?

09:54:08 23 JUROR OVERSTREET: No.

09:54:08 24 THE COURT: Okay. Thank you very much.

09:54:08 25 JUROR OVERSTREET: Thank you.

09:54:13 1 THE COURT: That's very helpful.

09:54:14 2 Next is Panel Member No. 7, Ms. Parker. We've got
09:54:18 3 at least two Parkers in our group.

09:54:21 4 JUROR KALEY PARKER: My name is Kaley Parker. I
09:54:26 5 live in Queen City, Texas. I do have two children that we
09:54:29 6 adopted. I currently work for the Queen City ISD. I'm a
09:54:35 7 special education teacher assistant. I have a high school
09:54:40 8 diploma with a year of college. My husband is David
09:54:44 9 Parker. He works for Chevron. He is -- works in the
09:54:47 10 oilfield obviously, logistics coordinator, and also takes
09:54:51 11 over the COVID testing for all offshore rigs, and he's been
09:54:55 12 there for 11 years. And I have no prior jury services.

09:54:59 13 THE COURT: Thank you, Ms. Parker.

09:55:01 14 Next is No. 8, Panel Member No. 8, Mr. Moore.

09:55:08 15 JUROR BRIAN MOORE: Yes. I'm Brian Moore from
09:55:09 16 Atlanta, Texas. I have three children, two stepchildren.
09:55:13 17 I work for Baker Hughes Petrolite, Upstream Chemicals. I
09:55:18 18 am a driver there. Been there for eight years. I have a
09:55:21 19 high school diploma. My spouse's name is Rita Moore. She
09:55:27 20 is disabled. And I have no prior jury services.

09:55:30 21 THE COURT: All right, sir. Thank you, Mr. Moore.

09:55:32 22 Next is Panel Member No. 9, Mr. Quarles.

09:55:38 23 JUROR QUARLES: My name is Jerry Quarles. I live
09:55:42 24 in Hallsville, Texas. Been there 37 years. Have two grown
09:55:46 25 sons. Work for AP SWEPCO for 37 years, Pirkey Power Plant

09:55:52 1 in plant operations in various positions. Educational is
09:55:57 2 high school diploma. My spouse's name is Brenda. She was
09:56:01 3 a librarian aid for 20 years in Hallsville High School,
09:56:08 4 school districts. And no prior service.

09:56:12 5 THE COURT: All right, sir, thank you,
09:56:16 6 Mr. Quarles.

09:56:16 7 Next is Panel Member No. 10, Ms. Smith.

09:56:22 8 JUROR SMITH: Hello, my name is Angelique Smith.
09:56:27 9 I live in Diana, Texas. I have two children, one grown
09:56:31 10 that has moved out and one still in high school. I
09:56:32 11 currently work for myself as a metal scrapper and flipper
09:56:35 12 and part-time construction. I've been doing that for about
09:56:39 13 the last four years after being injured at Walmart after 13
09:56:44 14 years there. My educational background is high school
09:56:46 15 diploma. I've been divorced for eight years, something
09:56:50 16 like that. And I served on a jury in Gilmer, Texas a
09:56:55 17 number of years ago, which was a domestic violence alleging
09:57:00 18 attempted murder and ended in a mistrial.

09:57:02 19 THE COURT: Thank you very much.

09:57:03 20 Next is Panel Member No. 11, Mr. Thomas.

09:57:09 21 JUROR THOMAS: Good morning, Your Honor.

09:57:20 22 THE COURT: Good morning.

09:57:21 23 JUROR THOMAS: My name is James Thomas. I live in
09:57:24 24 Marshall, Texas. I've got two grown children. I'm
09:57:27 25 currently the building superintendent for Harrison County.

09:57:30 1 I've been there for four years. I've got a high school
09:57:33 2 diploma, and I'm not married, and I've served on a civil
09:57:37 3 case in a state's district court.

09:57:39 4 THE COURT: How long ago?

09:57:41 5 JUROR THOMAS: It's been over roughly a year ago.

09:57:43 6 THE COURT: All right. Do you remember what kind
09:57:44 7 of case it was?

09:57:45 8 JUROR THOMAS: I believe it was a suit over -- I
09:57:51 9 don't remember exactly. It was some suit, Judge, been a
09:57:54 10 while.

09:57:54 11 THE COURT: All right. Thank you.

09:57:55 12 All right. Next is Panel Member No. 12,
09:57:59 13 Ms. Turner.

09:58:00 14 JUROR TURNER: Good morning. Jeanette Turner.
09:58:05 15 Live in Marshall, Texas. Two children. I'm retired from
09:58:09 16 the University of Texas Health Science Center at Tyler as a
09:58:16 17 human resources and benefits manager. I worked there 24
09:58:19 18 years, eight months. College diploma. Divorced. I've
09:58:25 19 served on one civil jury at the 71st District Court here in
09:58:30 20 Marshall, Texas.

09:58:31 21 THE COURT: How long ago has that been,
09:58:33 22 Ms. Turner?

09:58:34 23 JUROR TURNER: That has been about 10 years.

09:58:36 24 THE COURT: Do you remember what the case was
09:58:37 25 about?

09:58:38 1 JUROR TURNER: It was about an accident.

09:58:40 2 THE COURT: Okay. Thank you very much, ma'am.

09:58:43 3 JUROR TURNER: Yes, sir.

09:58:44 4 THE COURT: Next is Panel Member No. 13, Mr. Rand.

09:58:47 5 JUROR RAND: Hi, my name is Flemon Rand. I've got

09:58:51 6 one grown daughter. I work for JBS/Pilgrim's Pride and

09:58:57 7 before that I worked for U.S. Steel for 32 years.

09:59:01 8 Education, high school and some technical hours for

09:59:08 9 wastewater management, water management. Spouse is Juanita

09:59:14 10 Rand. Retired. Last jury service was a criminal murder

09:59:19 11 case. And he pleaded -- he wound up pleading guilty to the

09:59:25 12 charge before we had a chance to make our decision in the

09:59:28 13 jury.

09:59:28 14 THE COURT: Where was that, Mr. Rand?

09:59:31 15 JUROR RAND: Upshur County.

09:59:35 16 THE COURT: And what did your wife do before she

09:59:38 17 retired?

09:59:39 18 JUROR RAND: She was a state resource officer

09:59:41 19 for -- applying for Medicaid/Medicare.

09:59:44 20 THE COURT: Thank you, sir.

09:59:46 21 JUROR RAND: Yes, sir.

09:59:47 22 THE COURT: All right. Next is Panel Member

09:59:48 23 No. 14, Ms. Washington.

09:59:50 24 JUROR WASHINGTON: My name is Janie Washington. I

09:59:56 25 live here in Marshall, Texas. I have three adult children.

09:59:59 1 I work for Marshall Pottery, Deroma, and I've been there
10:00:07 2 for 23 years. And I have a high school diploma, and I also
10:00:16 3 have a beauty salon. I'm not married. And I did two --
10:00:27 4 served jury twice.

10:00:28 5 THE COURT: And where was that, ma'am, here in
10:00:30 6 Marshall?

10:00:32 7 JUROR WASHINGTON: Here in Marshall.

10:00:33 8 THE COURT: Okay. And what kind of case was that
10:00:34 9 -- cases was that?

10:00:35 10 JUROR WASHINGTON: One was theft and the other was
10:00:39 11 drug trafficking.

10:00:40 12 THE COURT: And what do you do for Deroma?

10:00:44 13 JUROR WASHINGTON: Warehouse and shipping manager.

10:00:46 14 THE COURT: Okay. And you said you had a beauty
10:00:48 15 parlor or something like that. Does that mean you actually
10:00:51 16 operate one in addition to your other job?

10:00:54 17 JUROR WASHINGTON: Yes, sir, to supplement my
10:00:56 18 income.

10:00:57 19 THE COURT: Okay. That's what I thought. Thank
10:00:58 20 you, ma'am.

10:01:00 21 JUROR WASHINGTON: Yes.

10:01:00 22 THE COURT: Next is No. 15, Ms. Moore.

10:01:04 23 JUROR CAROLYN LOUISE MOORE: I'm Carolyn Moore. I
10:01:06 24 live in Union Grove. I have two grown children. And I
10:01:09 25 work at Seymour's part-time. And worked for Dillard's

10:01:15 1 cosmetics for 30 years. I have a high school background
10:01:18 2 plus training in the cosmetology. Not married. And I have
10:01:22 3 never served on a jury.

10:01:23 4 THE COURT: Thank you, Ms. Moore.

10:01:25 5 Next is Panel Member No. 16, Ms. Gibbons.

10:01:29 6 JUROR GIBBONS: My name is Rachel Gibbons. I live
10:01:35 7 in Jefferson, Texas, and I've lived there for almost 10
10:01:38 8 years. I have four children, one is graduated last year
10:01:42 9 and the other three are still in school. And then I do not
10:01:49 10 work. I've been a stay-at-home mom. And done that for 19
10:01:55 11 years.

10:01:56 12 THE COURT: You work plenty hard. You just don't
10:01:58 13 work outside the home.

10:02:03 14 JUROR GIBBONS: I was a high school drop-out. I
10:02:05 15 was on the wrong path then. And, yeah, I've straightened
10:02:09 16 up, though. My spouse's name is Milam Gibbons, and he
10:02:14 17 works at ProFrac as a driver/trainer, he teaches people how
10:02:17 18 to drive 18-wheelers, and he's worked there for
10:02:21 19 approximately three years. And I have never served on jury
10:02:26 20 duty.

10:02:26 21 THE COURT: Good. Thank you, ma'am.

10:02:28 22 All right. Next is No. 17, Ms. Dotson.

10:02:33 23 JUROR DOTSON: Good morning. My name is Melissa
10:02:37 24 Dotson. I have two adult children. I live in Marshall.
10:02:43 25 Work for MHC Kenworth. I've been with them a little over

10:02:50 1 four years. I'm a lead counter -- so I sell the parts.

10:02:54 2 I'm married to Chris Dotson, who works for Longview Police
10:02:57 3 Department. He's been with them currently 15 years.

10:03:00 4 Before that he was with another department for 15 years.

10:03:06 5 No prior jury service.

10:03:09 6 THE COURT: All right. And I assume MHC Kenworth
10:03:14 7 is a trucking company?

10:03:15 8 JUROR DOTSON: Yes, sir. It's a service and
10:03:17 9 part's department. It's a dealership.

10:03:19 10 THE COURT: All right. Thank you, ma'am.

10:03:21 11 JUROR DOTSON: You're welcome.

10:03:22 12 THE COURT: All right. Next is No. 18, Mr. Groce.

10:03:28 13 JUROR GROCE: Good morning. My name is Vernon
10:03:33 14 Groce. And I live in Atlanta, Texas. I have three
10:03:36 15 children, two boys and a girl. And I'm the pastor of Holly
10:03:41 16 Street Church of God.

10:03:43 17 I've been there for nine years. I've been
10:03:47 18 pastoring about 32 years. I have a high school education
10:03:49 19 and a chaplains license and ministerial expert training.
10:03:49 20 And my wife's name is Tabitha Groce and she works for the
10:03:57 21 Atlanta school district as a teacher's aid, and she's been
10:04:00 22 there about two years, I believe, and I've never been
10:04:03 23 selected for a jury.

10:04:04 24 THE COURT: All right. Sir, thank you very much.

10:04:10 25 Next is No. 19, Ms. Pierce.

10:04:16 1 JUROR PIERCE: Hi, my name is Traquaysha Pierce
10:04:21 2 and I live in Marshall, Texas. I have no kids and I'm
10:04:25 3 currently unemployed. I have a high school diploma. And I
10:04:32 4 have never been to jury service.

10:04:33 5 THE COURT: All right. Ma'am, thank you.

10:04:35 6 Next is No. 20, Mr. Ladish or Ladish.

10:04:40 7 JUROR LADISH: Good morning, my name is Ken
10:04:42 8 Ladish.

10:04:43 9 THE COURT: Ladish.

10:04:44 10 JUROR LADISH: And I'm from Gilmer, Texas. I've
10:04:46 11 got three grown children. Currently I'm retired. I used
10:04:50 12 to work for JW Power as an inventory coordinator too where
10:04:57 13 I balanced inventory and closed out work orders and made
10:05:00 14 sure the projected dollar amount matched the ending dollar
10:05:07 15 amount. I was there for a little over 25 years doing that.
10:05:12 16 I dropped out as a junior in college. And I'm divorced.
10:05:15 17 And I've had no previous jury service.

10:05:18 18 THE COURT: All right. Thank you, sir.

10:05:20 19 Next is Panel Member No. 21, Ms. Blevins.

10:05:32 20 JUROR BLEVINS: I am Dawn Blevins. I live in
10:05:35 21 Marshall, Texas. I have three Children. I work at Scott
10:05:39 22 Industries. What we do there is we process, manufacture
10:05:46 23 the components of specialized cylinders for hydraulics,
10:05:51 24 pneumatics, oilfield use. And I receive the purchased
10:05:56 25 material test reports throughout the entire company.

10:05:59 1 There's 13 plants in the United States and one up
10:06:01 2 in Canada. And I do all the invoicing for, processing, and
10:06:04 3 sales at my plant location. I've been there 15 years. I
10:06:08 4 have a high school diploma and some college. I am widowed.
10:06:16 5 My husband did floor installation for the nine years that
10:06:19 6 we were married and did that before then, and I've never
10:06:22 7 served on a jury.

10:06:23 8 THE COURT: Thank you, Ms. Blevins.

10:06:24 9 Next is Panel Member No. 22.

10:06:29 10 JUROR FRUIA: My name is Robin Fruia. I live in
10:06:35 11 Gilmer, Texas. I have four children. My place of
10:06:40 12 employment is Longview Community Ministries. We provide
10:06:47 13 emergency food and financial assistance for families in
10:06:51 14 crisis in Longview. I've worked there for 10 years. I
10:06:54 15 have a Bachelor's degree. My husband is Tracy Fruia, he
10:06:59 16 works at CHRISTUS Good Shepherd in Longview.

10:07:04 17 He's a perfusionist and he's been there for 32
10:07:05 18 years. And I served on a criminal case in Gregg County
10:07:08 19 many years ago, but it was settled, so I wasn't there for
10:07:15 20 too long.

10:07:15 21 THE COURT: And that was your only prior jury
10:07:17 22 duty.

10:07:19 23 JUROR FRUIA: Yes, sir.

10:07:20 24 THE COURT: Thank you very much, ma'am.

10:07:22 25 Next is Panel Member No. 23, Ms. Davis.

10:07:25 1 JUROR DAVIS: My name is Jennifer Davis. And I
10:07:27 2 live in Pittsburg, Texas. I have one child. I am
10:07:31 3 self-employed. I have two small businesses. I do online
10:07:35 4 sales and marketing. I'm an independent Paparazzi
10:07:40 5 consultant. My other job is I do construction clean-up and
10:07:45 6 residential clean-up.

10:07:46 7 I have worked at the first job as an independent
10:07:49 8 consultant for about seven months. And my cleaning job,
10:07:55 9 I've had about eight years. I have some college. I have
10:07:59 10 some business certificates. I have a certificate in
10:08:04 11 long-term care facilities as an activity director and a
10:08:09 12 dietary manager. My husband's name is Bryan Davis. He
10:08:13 13 works at Mid America Pet Food in Mt. Pleasant. And he does
10:08:20 14 shipping, and he's worked there two or three years. And I
10:08:25 15 haven't had no prior jury services.

10:08:27 16 THE COURT: Okay. Thank you, Ms. Davis.

10:08:29 17 Next is Panel Member No. 24, Ms. Nolan.

10:08:34 18 JUROR NOLAN: Yes. Hello. My name is Mary Alise
10:08:37 19 Nolan. I have three grown children. I worked for Gilmer
10:08:41 20 ISD 29 years. I'm an instructional coach there. And I
10:08:44 21 coach teachers from 8th through 12th in English. I --
10:08:47 22 educational background, I have a master's and an
10:08:51 23 administrative certification beyond that. My spouse's name
10:08:53 24 is Scott Nolan. His place of employment, he owns Nolan
10:08:59 25 Properties, which is a real estate brokerage.

10:09:02 1 And he also is a painting contractor by trade. He
10:09:04 2 has worked -- had that -- been a realtor for the past five
10:09:08 3 years and owned his own company for 35. And I have had no
10:09:12 4 prior jury services.

10:09:12 5 THE COURT: Thank you, ma'am.

10:09:13 6 Next is Panel Member No. 25, Ms. Miles.

10:09:18 7 JUROR MILES: Good morning. My name is Melissa
10:09:21 8 Miles. I live in Marion County Texas on Monterey Lake. I
10:09:29 9 have three adult children. I work at the VA in Shreveport
10:09:32 10 as a registered nurse. Worked there for 16 years. I have
10:09:36 11 an Associate degree in nursing. My husband's name is
10:09:41 12 Kevin. He works at KLX Energy Services, he's a machinist.
10:09:47 13 He's been there for seven years. And I have had no jury
10:09:51 14 service.

10:09:51 15 THE COURT: All right. Thank you, Ms. Miles.

10:09:52 16 Next is Panel Member No. 26, Ms. Alexander.

10:09:56 17 JUROR ALEXANDER: I live in Hallsville, Texas. I
10:10:00 18 have one child. I'm a special education teacher at
10:10:03 19 Hallsville ISD. I've worked for many years but I've worked
10:10:07 20 for Hallsville before. I have a Bachelor's degree. My
10:10:10 21 spouses's name is Daren Alexander, and he works for
10:10:13 22 Everything Marketing in Shreveport, and a web developer.
10:10:18 23 He's worked there for the last 10 years. And I've never
10:10:21 24 been on a jury.

10:10:23 25 THE COURT: All right. Thank you, Ms. Alexander.

10:10:25 1 Next is Panel Member No. 27, Ms. Bertussi.

10:10:31 2 JUROR BERTUSSI: Hello. My name is Rachelle

10:10:34 3 Bertussi. I live in Hughes Springs, Texas. I have no

10:10:37 4 children. I work at Goldwater Bank processing and

10:10:40 5 coordinating mortgage loan applications. Also, I work in a

10:10:47 6 salon on the weekends. I have a certification in cosmetic

10:10:51 7 tattooing and am a licensed tattoo artist in Texas. I have

10:10:57 8 a high school diploma and two years of college. I am not

10:11:03 9 married. And no prior jury service.

10:11:04 10 THE COURT: Thank you, ma'am.

10:11:05 11 All right. Next is Panel Member No. 28,

10:11:09 12 Ms. Black.

10:11:09 13 JUROR BLACK: My name is Jodi Black. I live in

10:11:17 14 Diana, Texas. I have a son, a step-daughter, and I am

10:11:20 15 currently raising my two nieces. I am a home health

10:11:24 16 pediatric nurse. I've been with this company for 10 years.

10:11:30 17 THE COURT: What company is that?

10:11:32 18 JUROR BLACK: Berson Pediatrics home health. I

10:11:39 19 am married to Drew Black, he works -- he's a plant manager

10:11:43 20 for Cactus Flow Products in Longview, but he also is a

10:11:47 21 crappie guide on the side, and he also runs 903 Outdoors.

10:11:54 22 It's a social media small business. No prior jury

10:12:02 23 services.

10:12:03 24 THE COURT: What about your educational

10:12:04 25 background, ma'am.

10:12:05 1 JUROR BLACK: Oh. High school diploma and I am a
10:12:08 2 LVN nurse from Panola college.

10:12:12 3 THE COURT: Thank you, ma'am.

10:12:13 4 All right. Next is Panel Member No. 29,
10:12:16 5 Mr. McGriff.

10:12:18 6 JUROR MCGRIFF: My name is Richard McGriff. I
10:12:20 7 have two daughters. I live in Marion County. I work for
10:12:26 8 Prysmian Group in Scottsville. Been there for 16 years.

10:12:27 9 THE COURT: What was the name of that business,
10:12:30 10 sir?

10:12:30 11 JUROR MCGRIFF: Prysmian, known as General Cable,
10:12:33 12 I guess, around here.

10:12:34 13 THE COURT: I see.

10:12:36 14 JUROR MCGRIFF: We got bought out a couple years
10:12:39 15 back.

10:12:39 16 THE COURT: Right. The word starts with a P. I
10:12:41 17 see it on the sign when I drive down Highway 80. I never
10:12:44 18 know how to pronounce it.

10:12:46 19 JUROR BLACK: Yes, sir.

10:12:46 20 THE COURT: Okay.

10:12:47 21 MR. MCGRIFF: High school background. My wife's
10:12:48 22 name is Ashley McGriff. She works at Magnolia Place in
10:12:54 23 Jefferson. She's been there for about a year as a nurse.
10:12:58 24 I served on one jury in Marion County. I guess it would be
10:13:05 25 a criminal case.

10:13:06 1 THE COURT: How long ago?

10:13:09 2 JUROR MCGRIFF: I want to say it was at least five
10:13:11 3 or six years ago.

10:13:12 4 THE COURT: All right, sir. Thank you very much.

10:13:14 5 JUROR MCGRIFF: Thank you.

10:13:15 6 THE COURT: Next is Panel Member No. 30,
10:13:18 7 Ms. Strong.

10:13:20 8 JUROR STRONG: Hello, can you hear me?

10:13:22 9 THE COURT: Yes, ma'am.

10:13:25 10 JUROR STRONG: My name is Sally Strong. I live in
10:13:28 11 Harleton. I have one grown son. I worked -- I'm retired
10:13:31 12 now but I worked for East Texas Council of Governments for
10:13:36 13 16 years. Worked in the work force system improvement
10:13:37 14 department. I was lead monitor for subsidized child care
10:13:42 15 services in east -- 14 counties of East Texas. And I have
10:13:45 16 a Bachelor's degree. My husband's name is Jeffrey. He's
10:13:51 17 self-employed as a wireless Internet installer. And he's
10:13:56 18 been doing that for about 17 years. And I've never served
10:14:02 19 in a jury.

10:14:02 20 THE COURT: Thank you, Ms. Strong.

10:14:03 21 All right. Next is Panel Member No. 31,
10:14:08 22 Ms. Langley.

10:14:09 23 JUROR LANGLEY: My name is Paulette Langley. I
10:14:13 24 live in Marshall, Texas. I have two grown children. Two
10:14:17 25 boys. My -- I'm retired, but I worked for Baker Hughes

10:14:25 1 Drilling Fluids for 22 years before. And now I'm a
10:14:29 2 caregiver for my mother who has Alzheimer's, late stages.
10:14:39 3 We're going for the record how she can have it the longest.

10:14:43 4 And I worked at Baker Hughes for 22 years. And I
10:14:46 5 had one year of college. My husband's name is Leslie
10:14:50 6 Langley. He works for Witco or Pergan chemical, and he
10:14:54 7 works in the transportation department. And he's worked
10:14:57 8 there 23 years, and I've worked -- I've done civil and
10:15:00 9 criminal. I've served on a jury for civil and criminal
10:15:04 10 here in Marshall.

10:15:04 11 THE COURT: Okay. All right. Ms. Langley, are
10:15:07 12 there other people that could provide care for your mother
10:15:09 13 if you were selected to serve?

10:15:12 14 JUROR LANGLEY: Well, my husband took the day off
10:15:14 15 today, but I do have somebody I can --

10:15:18 16 THE COURT: All right.

10:15:19 17 JUROR LANGLEY: -- rely on.

10:15:21 18 THE COURT: Thank you, ma'am.

10:15:22 19 Next is Panel Member No. 32, Mr. Adams.

10:15:25 20 JUROR ADAMS: Good morning. My name is Gary
10:15:30 21 Adams. I live in Camp County. I have one daughter. I
10:15:34 22 retired after a 35-year career with BP Corporation. My
10:15:39 23 background, I have a Bachelor of Science in mechanical
10:15:42 24 engineering and did graduate work in petroleum engineering.
10:15:45 25 My spouse's name is Janet. She is retired also, also

10:15:49 1 worked as a florist. And no prior jury service.

10:15:53 2 THE COURT: All right. Thank you, Mr. Adams.

10:15:56 3 Next is Panel Member No. 33, Ms. Carter.

10:16:00 4 JUROR CARTER: Hello. Sorry. My name is Nancy

10:16:05 5 Carter. I live in Gilmer, Texas. I have three grown

10:16:08 6 children. I teach economics at Tyler Junior College right

10:16:13 7 now. I've been there for five years. Prior to that, I

10:16:18 8 taught at other colleges and universities.

10:16:21 9 I have Bachelor's and Master's both in economics.

10:16:26 10 I have doctoral work in industrial engineering and in --

10:16:32 11 they called it educational computing, basically trying to

10:16:35 12 get better at teaching online. So I have that.

10:16:38 13 My husband's name is Glen Carter. He is retired.

10:16:43 14 He was a construction design engineer for the New Mexico

10:16:48 15 state highway department. And, yeah, I -- he worked there

10:16:54 16 for 27 years. And prior jury service, I served on a -- it

10:17:04 17 was criminal -- I think it was somewhere between insurance

10:17:08 18 fraud and theft. That was the debate was which one it was

10:17:13 19 in New Mexico. And then I was selected for a jury here in

10:17:19 20 Gilmer, but they settled when we broke to -- for everybody

10:17:25 21 to get ready, we came back to be seated, and it was

10:17:28 22 settled. So I really don't know what it was about.

10:17:30 23 THE COURT: All right. Thank you, Ms. Carter.

10:17:32 24 All right. Next is Panel Member No. 34,

10:17:36 25 Mr. Endsley.

10:17:37 1 JUROR ENDSLEY: Good morning. My name is Darrell
10:17:42 2 Endsley. And I live in Queen City, Texas. And I have four
10:17:46 3 adult children. I'm retired. And I retired from the
10:17:52 4 Federal Bureau of Prisons after 30 years, and I lived in
10:17:55 5 Queen City all my life. And I have a high school degree
10:18:00 6 and some college.

10:18:01 7 My wife's name is Shannon. And she's retired as a
10:18:05 8 school teacher from Queen City Independent School District.
10:18:11 9 And she lived there probably about 25 years. And I was on
10:18:14 10 a grand jury about 20 years ago for Cass County.

10:18:18 11 THE COURT: All right. And your wife worked for
10:18:21 12 Queen City ISD.

10:18:23 13 JUROR ENDSLEY: Yes.

10:18:26 14 THE COURT: Did you say 25 years?

10:18:26 15 JUROR ENDSLEY: About 28 almost 30 years.

10:18:29 16 THE COURT: Okay. Thank you, sir.

10:18:30 17 All right. Next is Panel Member No. 35, Ms. Bush.

10:18:34 18 JUROR BUSH: Hello. My name is Christine Bush and
10:18:41 19 I live in Harleton, Texas. I have three grown children and
10:18:45 20 three grown stepchildren. I work at Summer Meadows nursing
10:18:47 21 home and rehab in Longview, Texas. And I'm an MDS
10:18:48 22 coordinator. I've worked there for 16 years. I have a
10:18:52 23 high school diploma and one year of junior college. My
10:18:55 24 husband's name is Allen Bush. He works for Lindenmeyr
10:19:02 25 Munroe. It's formerly Olmsted-Kirk, and he's worked there

10:19:05 1 for 16 years. And I've only served on a grand jury.

10:19:09 2 THE COURT: What does your husband do, ma'am?

10:19:11 3 JUROR BUSH: He is a -- he was a toilet paper

10:19:16 4 person during the coronavirus salesman.

10:19:19 5 THE COURT: Okay.

10:19:19 6 JUROR BUSH: So A salesman.

10:19:20 7 THE COURT: All right. Next is Panel Member No.

10:19:23 8 36.

10:19:24 9 JUROR HUKILL: Good morning, my name is Henry

10:19:27 10 Hukill. I live in Harleton. I have two kids, three step

10:19:31 11 kids. I am currently employed with West Fraser, formerly

10:19:37 12 known as Norbord in Jefferson, Texas. I'm in the finishing

10:19:41 13 department there. I've been there for four years. Prior

10:19:43 14 to that, I have 22 years retired Army. I have a degree in

10:19:47 15 business. My wife's name is Tracy. She's a housewife.

10:19:50 16 Been a housewife for 10 years. And I have never served on

10:19:55 17 any jury duty.

10:19:56 18 THE COURT: All right, sir. Thank you very much.

10:19:58 19 Next is Panel Member No. 37, Ms. Clawson.

10:20:02 20 JUROR CLAWSON: My name is Catherine Clawson. I'm

10:20:04 21 from Jefferson, Texas. I have no kids. I am a pumper for

10:20:10 22 Hart and McFarland Oil Producers. I've been there for

10:20:12 23 about three years. I'm currently in college. I'm not

10:20:14 24 married. And I have never served on a jury.

10:20:16 25 THE COURT: Thank you, ma'am.

10:20:17 1 Next is No. 38, Ms. Ferguson.

10:20:22 2 JUROR FERGUSON: Hi, my name is Autumn Ferguson.

10:20:29 3 I live in Longview, Texas. I don't have any children. I

10:20:35 4 manage a video game and electronics store in Longview

10:20:38 5 called Game X Change. I have worked there for six years.

10:20:45 6 I've been the manager for five. I graduated high

10:20:49 7 school in 2014. I'm not married, but I do have a live-in

10:20:54 8 spouse. His name is Cody. And he works at the same

10:20:57 9 business I do. He's been there for 15 years. And I've

10:21:02 10 never been on a jury.

10:21:03 11 THE COURT: Thank you very much.

10:21:05 12 Next is No. 38, Mr. Driggers.

10:21:10 13 JUROR DRIGGERS: Good morning. My name is Casey

10:21:13 14 Driggers. Live in Gilmer, Texas. My children are

10:21:17 15 four-legged. No human children. I work for Brosn

10:21:21 16 Incorporated out of Gilmer, Texas. We own Custom

10:21:21 17 Commodities Transport and Elliot Truck Line.

10:21:27 18 I'm the executive vice president of safety and

10:21:29 19 personnel for that company. I've worked there about five

10:21:33 20 years. Have a high school diploma. About two years of

10:21:39 21 college. No degrees or certificates. I do hold a Texas

10:21:47 22 Commission of Law Enforcement certificate license for the

10:21:52 23 past 12 years. Currently reserve with the Gilmer Police

10:21:55 24 Department.

10:21:55 25 My spouse's name is Ashley Driggers. She works

10:21:58 1 for ETEX Telephone Cooperative out of Gilmer. She does a
10:22:03 2 little bit of everything there. She's worked there about
10:22:06 3 12 years. I am -- I cannot serve on a jury because nobody
10:22:14 4 will pick me because of my law enforcement. But I have
10:22:17 5 testified and been an expert witness.

10:22:21 6 THE COURT: You have served as a juror?

10:22:23 7 JUROR DRIGGERS: No, sir.

10:22:24 8 THE COURT: Okay. Thank you, Mr. Driggers.

10:22:26 9 Next is No. 40, Mr. Berryhill.

10:22:31 10 JUROR BERRYHILL: Morning.

10:22:31 11 THE COURT: Morning.

10:22:32 12 JUROR BERRYHILL: I'm Waymonn Berryhill. I've
10:22:36 13 lived in Longview for 30 years. Let's see, I have three
10:22:41 14 grown children. I'm retired. I worked last at Albertson's
10:22:50 15 as a scan coordinator. What that is, is just determining
10:22:54 16 that the shelf price matches the computer. I have a high
10:23:03 17 school diploma and about two years of college. I'm a
10:23:08 18 widower. Prior jury duty, I served on a criminal -- charge
10:23:20 19 here in Longview.

10:23:21 20 THE COURT: All right, sir.

10:23:22 21 JUROR BERRYHILL: Sorry, here in Marshall.

10:23:23 22 THE COURT: How long ago has that been, sir?

10:23:26 23 JUROR BERRYHILL: About 10 years ago.

10:23:28 24 THE COURT: Thank you very much.

10:23:28 25 All right. Ladies and gentlemen, thank you very

10:23:32 1 much for that information.

10:23:33 2 Now, I need to say a couple more things to you
10:23:37 3 before I turn the questioning over to the lawyers.

10:23:39 4 The jurors that are actually to serve as our
10:23:44 5 eight-person jury in this case will serve in the role as
10:23:47 6 the judges of the facts. And the jury will make the sole
10:23:51 7 determination what the facts are in this case.

10:23:56 8 Now, my job as the judge is to rule on questions
10:24:01 9 of law, procedure, and evidence that might arise, to
10:24:03 10 maintain the decorum of the court, and to oversee an
10:24:07 11 efficient progression of the trial.

10:24:09 12 Also I want to say a couple things to you about
10:24:11 13 our judicial system that hopefully will put things in a
10:24:14 14 proper perspective for you.

10:24:15 15 In any jury trial, besides the parties themselves,
10:24:21 16 there are always three participants, the jury, the judge,
10:24:24 17 and the lawyers.

10:24:26 18 With regard to the lawyers, I think it's important
10:24:28 19 for each of you to understand that our judicial system is
10:24:32 20 an adversary system, which simply means that during the
10:24:36 21 course of the trial, each of the parties, through their
10:24:40 22 counsel, will attempt to present their respective cases to
10:24:44 23 the jury in the very best light possible.

10:24:46 24 Now, it's no surprise to any of you that lawyers
10:24:50 25 are sometimes criticized in the public and in the media,

10:24:55 1 but it's been the Court's perception that at least some of
10:24:58 2 that criticism comes from a basic misunderstanding of our
10:25:04 3 adversary system of justice in which the lawyers act as
10:25:08 4 advocates for the competing parties.

10:25:10 5 And as an advocate, a lawyer is ethically and
10:25:14 6 legally obligated to zealously assert his or her client's
10:25:19 7 position under the rules of our adversary system, and by
10:25:23 8 presenting the best case possible on behalf of their
10:25:26 9 respective clients, the lawyers hopefully will enable the
10:25:30 10 jury to better weigh the relevant evidence, to determine
10:25:33 11 the truth, and to arrive at a just verdict based on that
10:25:38 12 evidence.

10:25:38 13 This adversary system of justice has served our
10:25:42 14 nation well for well over 200 years, and America's lawyers
10:25:46 15 have been, are now, and will continue in the future to be
10:25:49 16 an indispensable part of this process.

10:25:52 17 So as we go forward with this trial, even though
10:25:57 18 it's possible over the course of the trial from time to
10:26:01 19 time I might frown at the lawyers, I'm simply trying to
10:26:05 20 make sure that their advocacy doesn't get outside the
10:26:11 21 boundaries of our adversary system and our rules of
10:26:13 22 procedure.

10:26:14 23 But those of you selected to serve on the jury
10:26:16 24 should keep in mind that the lawyers are just doing their
10:26:19 25 jobs, and I think it's important for all of to you

10:26:20 1 understand that as we go forward.

10:26:22 2 Also, ladies and gentlemen, for those of you
10:26:26 3 selected to serve on this jury, over the course of the
10:26:28 4 trial, I am going to do my very best to make sure that the
10:26:33 5 jury has no idea about what I think about the witnesses or
10:26:38 6 the evidence in this case, because determining the facts in
10:26:43 7 this case from the witnesses and the evidence is the jury's
10:26:47 8 job, it is not my job.

10:26:50 9 And the jury should not take any expressions or
10:26:54 10 comments that say see or hear or think they see or hear as
10:26:58 11 coming from me as something to consider in making the
10:27:00 12 ultimate decision about what the facts are in this case.
10:27:03 13 And I think it's important for you to keep that in mind, as
10:27:06 14 well.

10:27:06 15 All right. At this time, Plaintiff's counsel may
10:27:11 16 address the panel.

10:27:12 17 Ms. DeRieux, would you like a warning on your
10:27:17 18 time?

10:27:18 19 MS. DERIEUX: Yes, Your Honor. Five minutes,
10:27:28 20 please.

10:27:28 21 THE COURT: All right. You may proceed from the
10:27:31 22 podium when you're ready.

10:27:32 23 MS. DERIEUX: Good morning. I'm going to start
10:27:40 24 with the information that Judge Gilstrap started with and
10:27:42 25 that you've already shared with us, so we sort of start on

10:27:47 1 a fair and even playing field here.

10:27:48 2 My name is Elizabeth DeRieux. I live in

10:27:51 3 Gladewater, Texas. I have four adult children and nine

10:27:55 4 grandbabies. I work as an attorney. And my firm is

10:28:04 5 Capshaw DeRieux and our offices are in Gladewater. I've

10:28:08 6 been a lawyer 36 years, and we started our specific firm

10:28:12 7 about eight years ago.

10:28:13 8 I have an English degree from Lamar University. I

10:28:16 9 started my career as an English teacher in high school and

10:28:21 10 then later went to law school and have a law degree from

10:28:27 11 the University of Houston. I'm married to Pete Adams.

10:28:32 12 He's also an attorney although he's retired from his

10:28:33 13 practice.

10:28:33 14 And he runs a book store in Gladewater, known as

10:28:36 15 Gladewater Books. So the curmudgeon that sits behind the

10:28:41 16 counter at Gladewater Books is my husband. I have never

10:28:45 17 been selected to serve on a jury.

10:28:49 18 So I want to start with just a few remarks to give

10:28:57 19 you a very high-level understanding of the case that we're

10:28:59 20 going to be discussing in an effort to help you respond to

10:29:02 21 the questions so that we can all evaluate whether or not

10:29:06 22 you're the right person for this jury. The case concerns

10:29:12 23 one United States patent, and we'll be referring to it as

10:29:16 24 the '091 patent, and it's owned by PMC, the Plaintiff.

10:29:19 25 And the patent lays out detailed methods for how

10:29:24 1 to encrypt and decrypt signals to protect digital content
10:29:31 2 such as apps or music or movies, for example.

10:29:33 3 The Defendant, as you've heard, is Apple. And
10:29:36 4 Apple's FairPlay, and you'll hear this word a lot as we go
10:29:41 5 through the trial, FairPlay functionality is accused of
10:29:44 6 infringing the '091 patent. That is -- our contention is
10:29:50 7 that Apple is using the patented technology without
10:29:54 8 permission.

10:29:55 9 THE COURT: Ms. DeRieux, let me interrupt a
10:29:57 10 minute.

10:29:58 11 If I could ask the two gentlemen that serve as
10:30:04 12 CSOs to stand at the back of the room. That way your
10:30:08 13 physiques won't block anybody on the panel from seeing the
10:30:13 14 person at the podium.

10:30:13 15 Thank you.

10:30:13 16 Go ahead, Ms. DeRieux.

10:30:14 17 MS. DERIEUX: Apple uses FairPlay each time the
10:30:16 18 content is downloaded by an Apple device, and that
10:30:21 19 includes, for example, downloads of books or music or TV
10:30:25 20 shows or apps or movies through iTunes or app stores. The
10:30:31 21 patented technology allows Apple to protect against piracy
10:30:33 22 of the copyrighted content that it distributes. And
10:30:36 23 without those protections, Apple's ability to distribute
10:30:39 24 their content online would be severely limited.

10:30:42 25 Apple, as you've heard, denies that it is

10:30:45 1 trespassing on our property, and it also claims that the
10:30:50 2 '091 patent is really not worth that much money.

10:30:51 3 So I'm going to try to spend the next 25 or 30
10:30:55 4 minutes with you listening to you. So I want you to feel
10:31:01 5 free to talk to me. This is our one opportunity to hear
10:31:04 6 from our jurors. And the rest of the time, if you're
10:31:07 7 selected for the jury, you're going to have to listen to
10:31:10 8 the lawyers and the witnesses.

10:31:11 9 If you have any personal beliefs, if you have
10:31:15 10 likes or dislikes or life experiences that might start you
10:31:18 11 leaning toward one side or the other, this is our
10:31:21 12 opportunity to learn about that. Leaning toward one side
10:31:26 13 or the other, you often hear the word "bias" or
10:31:29 14 "prejudice," and outside this courtroom context, bias and
10:31:34 15 prejudice might feel like bad words.

10:31:36 16 So I don't want to point to you and say are you
10:31:39 17 biassed or prejudiced. Because in this context, that's not
10:31:43 18 really what we're talking about. We're talking about a
10:31:45 19 very universal experience that we all have. We all bring
10:31:48 20 our experiences to the courtroom. We bring our own
10:31:50 21 personal beliefs to the courtroom.

10:31:52 22 And that's not something to be ashamed of. That's
10:31:54 23 something to be proud of and to talk about here so that we
10:31:58 24 can find out if you are the right person for this case.

10:32:01 25 Let me start out by asking, have -- did all of you

10:32:07 1 see the video this morning? I'm just testing to see if
10:32:11 2 you're listening to me.

10:32:12 3 Have any of you seen any other videos about the
10:32:16 4 patent system or about the Patent Office other than the one
10:32:21 5 that you heard about -- that you've listened to this
10:32:24 6 morning before we started? Anybody else seen any other
10:32:28 7 patent videos? Thank you.

10:32:30 8 Have any of you ever read or seen or heard
10:32:36 9 anything else about the patent system before you got here
10:32:40 10 this morning that left you with strong opinions, one way or
10:32:45 11 the other, about the patent system? The patent system in
10:32:50 12 America is terrible, it's wonderful? Anyone else?

10:32:52 13 Okay. You heard in that video this morning that a
10:33:02 14 patent -- excuse me -- that a patent is a piece of
10:33:05 15 property. And when the Patent Office issues that patent,
10:33:10 16 I'm going to refer to it as an analogy. It's like the
10:33:14 17 deed. But we can't call the sheriff. There are no patent
10:33:19 18 police. We can't call them and say, somebody's trespassing
10:33:22 19 on our property.

10:33:22 20 So the one thing we can do is to come into a
10:33:25 21 District Court with a lawsuit, such as this one, and
10:33:29 22 enforce that patent.

10:33:31 23 Do we have any landowners on our panel today?

10:33:35 24 Let me see your hands again.

10:33:41 25 All right. I'm going to try to call your names as

10:33:47 1 well as your numbers, and if I mess up your name, please
10:33:50 2 correct me. I'll try not to mess it up twice.

10:33:53 3 Ms. Smith is No. 10. She's going to -- he's going
10:33:57 4 to bring you a microphone, and I'm going to ask you some
10:34:00 5 questions.

10:34:02 6 THE COURT: And would you stand up, please.

10:34:05 7 MS. DERIEUX: Now, I believe you said that you own
10:34:07 8 some land.

10:34:09 9 JUROR SMITH: Yes, ma'am.

10:34:10 10 MS. DERIEUX: If an oil company drilled a well on
10:34:12 11 your property without your permission, what would you do?

10:34:16 12 JUROR SMITH: Wonder how they got past the dogs
10:34:19 13 first. I'm sure I would find out why they thought they
10:34:23 14 could drill there.

10:34:26 15 MS. DERIEUX: And if they thought they could drill
10:34:28 16 there, would that be okay, if they said, Oh, we've got this
10:34:32 17 really good excuse, and we think it's okay.

10:34:35 18 JUROR SMITH: No.

10:34:36 19 MS. DERIEUX: Would you end it there?

10:34:38 20 JUROR SMITH: Oh, I would definitely not end it
10:34:40 21 there.

10:34:41 22 MS. DERIEUX: What would you do next?

10:34:43 23 JUROR SMITH: I imagine I would want to seek
10:34:45 24 monetary comfort compensation or get their rig removed.

10:34:50 25 MS. DERIEUX: Would you do that through a judicial

10:34:52 1 process such as this, or do you have another idea about how
10:34:54 2 you might address that?

10:34:55 3 JUROR SMITH: I don't think people would be too
10:34:57 4 scared of me, so I would take it to a court process.

10:35:01 5 MS. DERIEUX: Okay. Thank you.

10:35:03 6 JUROR SMITH: Thank you.

10:35:04 7 MS. DERIEUX: I'm going to ask Mr. Parker, I
10:35:06 8 believe you're No. 5. We have different Parkers on our
10:35:10 9 panel this morning.

10:35:11 10 Now I'm going to refer in some cases to statements
10:35:15 11 that were made on the questionnaires that you submitted.
10:35:19 12 And if I -- you know what, we looked at those really
10:35:23 13 quickly, and if I asked you a question and said, Do you
10:35:26 14 remember when you said that on the questionnaire and you
10:35:28 15 didn't say that on your questionnaire, remind me of that
10:35:32 16 because I've got that wrong.

10:35:34 17 So I'm going to start with Mr. Parker and say I
10:35:37 18 believe you made a remark on your questionnaire that it's
10:35:40 19 your personal belief that things should be handled outside
10:35:44 20 of court.

10:35:44 21 JUROR JAMES PARKER: Yes. I work in a field where
10:35:45 22 we have to work closely with each other and nothing -- all
10:35:49 23 things can be worked out, you know, one-on-one, if given
10:35:52 24 the right time and place.

10:35:53 25 MS. DERIEUX: And is that related to your

10:35:55 1 profession?

10:35:56 2 JUROR JAMES PARKER: Profession and way of life.

10:35:59 3 MS. DERIEUX: All right. Given that that is your
10:36:02 4 belief, do you believe that that would start you in this
10:36:05 5 case either for or against either of the parties in -- in
10:36:10 6 court if you were to be seated as part of the jury?

10:36:14 7 JUROR JAMES PARKER: Why, yes. I mean, that's
10:36:17 8 just a belief I've always lived by for 41 years. There's
10:36:21 9 no way of changing it. I say it every day, your whole job
10:36:25 10 revolves around conflict. Things are going to break.
10:36:29 11 People don't understand it. That's just part of life.

10:36:32 12 MS. DERIEUX: If you were seated on this jury,
10:36:35 13 could you give my client a fair hearing and follow the
10:36:40 14 instructions from the Court?

10:36:43 15 JUROR JAMES PARKER: I would try. But I couldn't
10:36:45 16 promise you that.

10:36:46 17 MS. DERIEUX: All right. I understand. Thank
10:36:47 18 you. That's a -- I want to just hold Mr. Parker up as a
10:36:51 19 perfect example of a juror giving us information to help us
10:36:54 20 make the right decision here.

10:36:56 21 Is there anybody here that feels that patent
10:37:02 22 rights should be treated differently than property, like
10:37:08 23 land? In other words, I made this analogy, it's like a
10:37:11 24 deed, what if it was on your property, and you're saying,
10:37:15 25 oh, well, I get that if it's on my real estate, but patents

10:37:20 1 are somehow different. Anybody hold that view?

10:37:23 2 Let me ask it the other way. Does it make sense

10:37:26 3 in your head and consistent with your personal beliefs that

10:37:30 4 an owner of patent rights would treat those rights in a way

10:37:35 5 that is similar to the way you would treat your own

10:37:38 6 personal real estate rights? Is that consistent with your

10:37:41 7 beliefs?

10:37:41 8 All right. I'm going to talk to you just a minute

10:37:50 9 about PMC. This is probably not a company that you've

10:37:54 10 heard of. But the Plaintiff is a company founder -- excuse

10:37:58 11 me, founded by the inventor of the '091 patent. And it was

10:38:03 12 developed to license technology in its patents. PMC does

10:38:06 13 not manufacture devices, and it does not produce or provide

10:38:13 14 music or video content.

10:38:14 15 Is there anybody that believes that a company that

10:38:17 16 owns patents but that does not actually manufacture devices

10:38:22 17 or provide or produce videos or music, is that company

10:38:28 18 entitled to less protection than a company that actually

10:38:31 19 sells products or content?

10:38:41 20 I'm going to ask Mr. Jones, Juror No. 1.

10:38:51 21 JUROR JONES: To be frank, I really don't

10:38:53 22 understand the question because --

10:38:56 23 MS. DERIEUX: Let me try it again. No, that's

10:38:57 24 fair. Let me try it again.

10:38:59 25 You will hear that Apple produces products and

10:39:04 1 sells products. My client, PMC, does not sell products nor
10:39:09 2 does it produce video content or music.

10:39:13 3 JUROR JONES: Uh-huh.

10:39:14 4 MS. DERIEUX: And my question is, is one company
10:39:16 5 that doesn't sell products at a disadvantage, from your
10:39:20 6 point of view, because it doesn't actually sell the
10:39:22 7 products?

10:39:23 8 JUROR JONES: Yeah, I agree. I mean, yeah, I'd
10:39:28 9 say they're at a disadvantage.

10:39:30 10 MS. DERIEUX: And why is that?

10:39:32 11 JUROR JONES: Because they don't sell nothing.
10:39:35 12 They just own a patent. That's all they're holding is a
10:39:37 13 piece of paper.

10:39:38 14 MS. DERIEUX: All right. Thank you.

10:39:39 15 JUROR JONES: You're welcome.

10:39:40 16 MS. DERIEUX: Do I have anybody on the panel that
10:39:43 17 wants to disagree with Mr. Jones and take the other
10:39:45 18 position, that you think that a company that owns a patent
10:39:50 19 has a right to enforce it, whether they sell the products
10:39:53 20 or not?

10:39:57 21 I'm want to ask Mr. Moore, No. 8.

10:40:06 22 JUROR BRIAN MOORE: It's their property. They
10:40:11 23 deserve to protect it, whether they make anything or they
10:40:14 24 make anything, they have a patent on it.

10:40:16 25 MS. DERIEUX: All right.

10:40:17 1 JUROR BRIAN MOORE: That's my belief.

10:40:19 2 MS. DERIEUX: Yes, sir. Thank you.

10:40:20 3 Let me ask Ms. Alexander. I believe you're

10:40:35 4 No. 26. On your questionnaire, if I don't have this

10:40:38 5 confused, you made a note that you were once accused of

10:40:43 6 using someone else's idea?

10:40:47 7 JUROR ALEXANDER: (Shakes head negatively.)

10:40:48 8 MS. DERIEUX: That wasn't you? Sorry.

10:40:50 9 Has anybody else on the panel ever had a personal

10:40:58 10 experience where they -- either someone used an idea that

10:41:00 11 they came up with, without permission, or that you were

10:41:05 12 accused of using someone else's idea? Is there anybody on

10:41:08 13 the panel that's had a personal experience?

10:41:13 14 That's No. 28. You are Ms. Black. Did you say

10:41:25 15 that on your questionnaire and I got it confused?

10:41:28 16 JUROR BLACK: Pretty much.

10:41:29 17 MS. DERIEUX: Okay. I'm sorry for the confusion.

10:41:31 18 Thank you for helping.

10:41:33 19 JUROR BLACK: Me and my husband run a small

10:41:37 20 business online, it's 903 Outdoors, I don't know if any of

10:41:41 21 you guys heard of it. But we were accused from a Oklahoma

10:41:45 22 similar small business that we were copyrighting their logo

10:41:48 23 and their idea. They didn't have any kind of proof. I

10:41:55 24 mean, we were contacted from an attorney. But we just

10:41:57 25 chose to settle it with them.

10:42:03 1 You know, not go public with it, not go to court
10:42:06 2 with it. We settled between the two parties. We changed
10:42:08 3 our logo. They agreed to let us stay within the 903 area.
10:42:14 4 They stayed in Oklahoma. And we worked it out like that.

10:42:18 5 MS. DERIEUX: Is there anything that you carry
10:42:23 6 from that experience that you think would cause you to
10:42:26 7 lean, either for or against, PMC if you were seated as a
10:42:35 8 juror in this case?

10:42:36 9 JUROR BLACK: Yes and no. We -- you know, at the
10:42:42 10 time, this has been -- I mean, we -- my husband started
10:42:45 11 running this company probably 12 years ago. And at the
10:42:49 12 time that this happened, we didn't really have a lot
10:42:54 13 invested in it. They had only been a business probably a
10:42:59 14 year before us.

10:43:04 15 We really didn't think that our logo looked
10:43:07 16 anything like theirs. We didn't think -- I mean, we didn't
10:43:10 17 even know who they were. How could we have copied you
10:43:13 18 guys. Where did y'all come from? You know. And so I
10:43:16 19 think that we chose to settle -- we just chose to work it
10:43:21 20 out and settle, and, you know, not make a big stink about
10:43:25 21 it.

10:43:26 22 I feel like money -- you know, at that time, I
10:43:29 23 told my husband, let's just work it out and not -- and
10:43:33 24 let's get it out of the way before we start making more
10:43:35 25 money, we have more merchandise, and we have more invested,

10:43:40 1 you know, rather than get later down the road and we've got
10:43:43 2 more things involved, if that makes any sense. I dont know.

10:43:47 3 MS. DERIEUX: It does. Thank you very much.

10:43:52 4 That's very helpful.

10:43:52 5 Does anybody on the panel own stock in Apple? I
10:44:00 6 need to see your hands, and keep them up because we need to
10:44:03 7 identify anybody.

10:44:05 8 You are No. --

10:44:08 9 JUROR ADAMS: 32.

10:44:11 10 MS. DERIEUX: -- 32.

10:44:12 11 Anybody else on the panel own stock? You own
10:44:17 12 stock in Apple? Ms. Black.

10:44:20 13 Anyone else?

10:44:25 14 Is it Mr. Rand?

10:44:29 15 JUROR QUARLES: Quarles, No. 9.

10:44:32 16 MS. DERIEUX: Gotcha.

10:44:34 17 And I saw another hand. Anyone else on the panel
10:44:43 18 own stock?

10:44:55 19 JUROR ADAMS: Can I clarify the inquiry?

10:44:55 20 MS. DERIEUX: Yes, sir.

10:44:57 21 JUROR ADAMS: Yes, I don't own individual Apple
10:45:00 22 stock. I own it through mutual funds, through aggregate
10:45:06 23 funds, so I just wanted to make that distinction.

10:45:10 24 MS. DERIEUX: Thank you.

10:45:12 25 And if anybody else has that circumstance, let's

10:45:12 1 raise your hand as well.

10:45:12 2 Yes, ma'am, you're Ms. Langley?

10:45:12 3 JUROR LANGLEY: Yes.

10:45:13 4 MS. DERIEUX: And you also own Apple stock?

10:45:14 5 JUROR LANGLEY: We're in mutual funds.

10:45:19 6 MS. DERIEUX: Gotcha. Anyone else?

10:45:19 7 Okay. I see another hand.

10:45:19 8 Yes, ma'am?

10:45:28 9 JUROR MILES: 25, Melissa Miles.

10:45:28 10 MS. DERIEUX: I'm sorry. Stand up SO --

10:45:30 11 JUROR MILES: 25.

10:45:30 12 THE COURT: We're going to have to take these one

10:45:33 13 at a time and make sure we identify everybody individually.

10:45:37 14 JUROR MILES: Hi. 25, Melissa Miles. We also own

10:45:41 15 some mutual funds with Apple.

10:45:43 16 MS. DERIEUX: Okay. Thank you.

10:45:44 17 Anybody I missed that I didn't get your name and

10:45:49 18 number? Okay.

10:45:50 19 During the trial, the jury's going to hear from a

10:45:57 20 royalty and financial expert who's going to explain the

10:46:00 21 financial benefits that Apple received using PMC's patents.

10:46:05 22 Is there anybody on the panel that feels that no

10:46:09 23 matter what the evidence shows and even if you found

10:46:14 24 infringement, there's just no way you could ever see

10:46:16 25 yourself writing down substantial or a large amount of

10:46:21 1 damages regardless of what the evidence of damages is?

10:46:28 2 Anybody have a strong reaction to that one way or the

10:46:31 3 other?

10:46:36 4 All right. Is there anybody on the panel that

10:46:40 5 owns an Apple product?

10:46:47 6 Let me ask it the other way.

10:46:51 7 Is there anybody on the panel who does not own an

10:46:54 8 Apple product?

10:47:00 9 Is there anybody on the panel who has never owned

10:47:02 10 an Apple product?

10:47:04 11 Okay. I'm going to take just a minute. I'm going

10:47:07 12 to ask you to keep your hands up until I say your number.

10:47:12 13 Number 2 and 9 and 17. I can't see everybody. I

10:47:27 14 believe Ms. -- No. 12 and 13 and 20. You are 16.

10:47:43 15 JUROR GIBBONS: I did own one, but then I sold it

10:47:46 16 because --

10:47:47 17 THE COURT: All right. Folks, folks, we're going

10:47:48 18 to have to get a microphone, we're going to have to stand

10:47:51 19 up, and we're going to have to use that so I can hear you

10:47:53 20 and the court reporter can hear you. I know there are a

10:47:56 21 lot of hands up, but please don't speak unless you're

10:48:00 22 specifically called on, and then do it the way that I've

10:48:02 23 discussed it with you.

10:48:04 24 Go ahead, Ms. DeRieux.

10:48:06 25 MS. DERIEUX: I'm going to ask the officer to hand

10:48:08 1 Ms. Gibbons the microphone so she can say for the record
10:48:13 2 what she just said on -- in response to my question.

10:48:20 3 JUROR GIBBONS: I did purchase an Apple --
10:48:23 4 actually my husband won it at a Christmas party for work.
10:48:28 5 And it was a tablet, a big tablet thing. I tried it out
10:48:32 6 for a little while, and I didn't like it, so I ended up
10:48:35 7 giving it to my dad.

10:48:36 8 MS. DERIEUX: Thank you.

10:48:37 9 No. 23, Ms. Davis?

10:48:44 10 THE COURT: Please hand her a microphone.

10:48:46 11 JUROR DAVIS: I've never had or owned any Apple
10:48:49 12 product.

10:48:49 13 MS. DERIEUX: All right. Did I get everybody that
10:48:59 14 raised their hand? Did I miss any hands?

10:49:03 15 No. 14.

10:49:05 16 Anyone else?

10:49:06 17 I'm going to ask -- I believe -- I hope I'm
10:49:11 18 pronouncing this correctly. No. -- Juror No. 27,
10:49:16 19 Ms. Bertussi?

10:49:23 20 JUROR BERTUSSI: Bertussi.

10:49:24 21 MS. DERIEUX: Bertussi. I need to practice that.

10:49:26 22 I believe on your questionnaire, you mentioned
10:49:29 23 that you had had some training in specialized technology,
10:49:33 24 but I wanted to just ask you to give us a little more
10:49:36 25 information about the training and knowledge that you have

10:49:38 1 in technology.

10:49:44 2 JUROR BERTUSSI: Mostly just with computers, you
10:49:47 3 know, processing applications in Excel and, you know,
10:49:49 4 things like that. Not really too technical.

10:49:53 5 MS. DERIEUX: So what were --

10:49:55 6 JUROR BERTUSSI: As far as certifications in IT or
10:49:58 7 anything.

10:49:58 8 MS. DERIEUX: I see. So you were trained in -- in
10:50:00 9 the end of the process where you -- where the user would
10:50:02 10 learn to use those programs as opposed to troubleshooting
10:50:06 11 on the TI side; is that correct?

10:50:09 12 JUROR BERTUSSI: Correct.

10:50:09 13 MS. DERIEUX: Okay. Is there anything about that
10:50:12 14 training that would keep you from focusing on the evidence
10:50:15 15 and following the evidence and the law as the judge gave
10:50:18 16 it?

10:50:20 17 JUROR BERTUSSI: I don't think so.

10:50:23 18 MS. DERIEUX: Okay. Is there anything about an
10:50:32 19 experience that you've had with an Apple product that
10:50:36 20 would -- is there anyone here who believes that they would
10:50:39 21 start out with an opinion or you would start out leaning
10:50:45 22 either for or against one of the parties because of your
10:50:50 23 personal experience with Apple consumer products?

10:50:54 24 Ms. Gibbons? Is this a different answer than your
10:50:59 25 experience that you were talking about a minute ago? I'm

10:51:02 1 going to ask you to take the mic.

10:51:06 2 JUROR GIBBONS: Not -- I've tried like with my
10:51:08 3 kids or my husband has one. I've messed with them a little
10:51:12 4 bit, but it's just -- I think -- I don't like the way they
10:51:16 5 operate, and I think they're overrated.

10:51:20 6 MS. DERIEUX: Thank you. I'm sorry, if she could
10:51:23 7 have the microphone back. Let me just ask one more
10:51:25 8 question.

10:51:26 9 Is there anything about those experiences and
10:51:29 10 opinions that you bring to the courtroom today that would
10:51:33 11 start you out one way or the other?

10:51:38 12 JUROR GIBBONS: No.

10:51:39 13 MS. DERIEUX: Do you believe that you could follow
10:51:40 14 the evidence and the instructions from the Court and be a
10:51:43 15 fair juror if you were selected?

10:51:45 16 JUROR GIBBONS: Yes, ma'am.

10:51:46 17 MS. DERIEUX: Okay. Thank you.

10:51:46 18 How many of you do not have any apps that you
10:51:51 19 personally downloaded from an app store on a personal
10:52:00 20 mobile device. Maybe I'm asking this a little backwards.

10:52:03 21 Have you ever downloaded an app onto your personal
10:52:12 22 mobile device? Raise your hand.

10:52:16 23 Okay. Is there anybody who didn't raise their
10:52:19 24 hand who has never downloaded an app?

10:52:32 25 I'm going to ask Ms. Goodman, No. 3.

10:52:44 1 THE COURT: You have five minutes remaining,
10:52:47 2 counsel.

10:52:47 3 MS. DERIEUX: Thank you.

10:52:47 4 How many apps have you personally downloaded if
10:52:51 5 you remember, just approximately?

10:52:55 6 JUROR GOODMAN: No more than 10.

10:52:57 7 MS. DERIEUX: All right. And how often would you
10:52:58 8 say that you do that?

10:53:02 9 JUROR GOODMAN: Oh, goodness, as the need arises,
10:53:06 10 not -- not too frequently.

10:53:09 11 MS. DERIEUX: Okay. Is there anything about your
10:53:11 12 experience in downloading personal apps that you believe
10:53:14 13 you would bring into the courtroom and would affect your
10:53:18 14 service as a juror in this case?

10:53:20 15 JUROR GOODMAN: No, ma'am.

10:53:20 16 MS. DERIEUX: All right. Thank you.

10:53:28 17 JUROR GOODMAN: Uh-huh.

10:53:29 18 MS. DERIEUX: Has anyone on the panel ever stood
10:53:32 19 in line to buy the latest technology, the latest iPhone,
10:53:36 20 the latest computer, and you know when it's going to be
10:53:40 21 released?

10:53:42 22 Yes, ma'am, thank you.

10:53:44 23 And, Mr. Parker?

10:53:52 24 JUROR JAMES PARKER: Yes.

10:53:56 25 MS. DERIEUX: Can you tell me a little bit about

10:53:58 1 that experience?

10:53:58 2 THE COURT: Let's take a microphone to Panel
10:53:58 3 Member No. 5, please.

10:54:00 4 JUROR JAMES PARKER: It's just like waiting for
10:54:01 5 any other video game. You wait, as soon as you comes out,
10:54:06 6 you make your purchase and hope for the best.

10:54:09 7 MS. DERIEUX: And what was the technology that you
10:54:10 8 had gotten in line ahead of time for?

10:54:13 9 JUROR JAMES PARKER: The latest one would be the
10:54:14 10 iPhone 12. I waited for it on the wait list, and when it
10:54:20 11 came out, it was shipped to me.

10:54:21 12 MS. DERIEUX: Great. Thank you.

10:54:22 13 Ms. Haley? I believe you said that you had a
10:54:35 14 sitting service, but that you also at some point served as
10:54:39 15 a paralegal in a law firm; is that correct?

10:54:42 16 JUROR HALEY: I didn't have any training, per se,
10:54:44 17 other than in the office. But, yes, I did for
10:54:48 18 approximately -- a total of four years. I worked for the
10:54:51 19 attorney for five.

10:54:53 20 MS. DERIEUX: And what kind of law did you
10:54:55 21 participate in as a paralegal?

10:54:57 22 JUROR HALEY: He did family, family law mainly.

10:55:01 23 MS. DERIEUX: Okay.

10:55:01 24 JUROR HALEY: Some accidents. I did the -- some
10:55:05 25 of the processing serving. I did all kinds of stuff.

10:55:08 1 MS. DERIEUX: Anything about that experience that
10:55:09 2 would impact your ability to be fair in this case?

10:55:12 3 JUROR HALEY: No.

10:55:12 4 MS. DERIEUX: All right. Thank you.

10:55:13 5 Can I ask y'all to look around and see if there's
10:55:17 6 anybody that you know on the panel?

10:55:24 7 Keep your hands up for me.

10:55:25 8 And this is what I'm -- I'm going to ask you each
10:55:28 9 if you were selected with your friends, your colleague,
10:55:32 10 your boss, your cousin, whoever else you know on the panel,
10:55:39 11 is there anybody that feels they couldn't make an
10:55:41 12 independent decision and not be influenced by their friend,
10:55:46 13 colleague, neighbor, boss, whoever is on the panel? Is
10:55:49 14 there anybody that has -- that would be concerned about
10:55:52 15 that? You don't have to tell me a lot of detail. I just
10:55:55 16 need a hand.

10:55:56 17 Ms. Gibbons. I need to know who that person is.

10:56:03 18 JUROR GIBBONS: Debra Haley is my mother, and my
10:56:07 19 mom is a very awesome woman, so I believe that her opinion
10:56:12 20 of something would kind of hinder mine.

10:56:14 21 MS. DERIEUX: You are a great daughter. Thank
10:56:17 22 you.

10:56:17 23 Anybody else that knows someone else on the panel
10:56:22 24 that thinks it might have an impact on your ability to be
10:56:26 25 independent?

10:56:27 1 All right. Let me have your hands again just one
10:56:32 2 more time on the people that know someone.

10:56:36 3 No. 17. Tell me who you know and how you're
10:56:39 4 related.

10:56:40 5 JUROR DOTSON: I know Ms. Langley through my
10:56:44 6 family, through my parents.

10:56:45 7 MS. DERIEUX: And if you were both selected for
10:56:47 8 the jury, do you think you could have an independent, even
10:56:50 9 if it -- even if it conflicted with her view, could you
10:56:53 10 form your own independent judgment.

10:56:55 11 JUROR DOTSON: Yes, I could.

10:56:56 12 MS. DERIEUX: Thank you.

10:56:59 13 I'm just going to gather my thoughts here and see
10:57:19 14 if there's anybody else I need to talk to.

10:57:21 15 Mr. Overstreet?

10:57:28 16 JUROR OVERSTREET: Yes, ma'am.

10:57:30 17 MS. DERIEUX: Yes, he's going to bring you a
10:57:32 18 microphone. Tell me, again, how long ago it was that you
10:57:41 19 served on the jury.

10:57:42 20 JUROR OVERSTREET: Almost like close to a year.

10:57:45 21 MS. DERIEUX: Do you think anything that you
10:57:47 22 learned or remembered from that experience would impact
10:57:49 23 your ability to serve fairly and independently on this
10:57:52 24 jury?

10:57:53 25 JUROR OVERSTREET: No, like I say, I -- they

10:57:55 1 settled out of court before --

10:57:57 2 MS. DERIEUX: How much of the evidence did you
10:57:58 3 hear? Did you actually --

10:58:00 4 JUROR OVERSTREET: I heard all of it. But, you
10:58:02 5 know, like I said, they settled out of court before.

10:58:07 6 MS. DERIEUX: Okay.

10:58:07 7 THE COURT: Ms. DeRieux, your time has expired.

10:58:12 8 MS. DERIEUX: Thank you.

10:58:13 9 THE COURT: Thank you, sir.

10:58:14 10 All right. Defendants may now address the panel.

10:58:19 11 Ms. Smith, would you like a warning on your time?

10:58:22 12 MS. SMITH: Please, Your Honor. Five minutes.

10:58:24 13 THE COURT: All right. You may proceed when
10:58:28 14 you're ready.

10:58:29 15 MS. SMITH: May it please the Court.

10:58:37 16 Good morning, everybody. In the way of
10:58:44 17 reintroduction, again, my name is Melissa Smith, and I'm
10:58:46 18 joined by Mr. Greg Arovas, and we represent Apple.

10:58:48 19 Now, the first thing and the most important thing
10:58:54 20 I'm going to do this morning is to thank you all. 2020 was
10:59:00 21 by anyone's measure a very, very challenging year. 2021,
10:59:03 22 for those of us living in East Texas, we have, you know,
10:59:07 23 boiling water and bursting pipes and tons of snow and it
10:59:12 24 hasn't been any easier.

10:59:14 25 I've spent time poring over your questionnaires.

10:59:17 1 We've got teachers, we've got first responders, we've got
10:59:21 2 medical professionals, and as I look at you guys, we've got
10:59:23 3 a whole group of people that have a million places you
10:59:24 4 probably are needed and quite frankly that you'd rather be.

10:59:28 5 So on behalf of Apple, we appreciate you showing
10:59:31 6 up today. It's an important case for us. And we
10:59:34 7 appreciate you making jury service a priority. Thank you.

10:59:38 8 Ms. DeRieux went through the questions with you,
10:59:45 9 and Judge Gilstrap did as well, and so that's where I will
10:59:48 10 start.

10:59:48 11 I went to the University of Texas undergrad and
10:59:51 12 graduated from UT in 1994. Like Judge Gilstrap, I went to
10:59:55 13 Baylor Law School. I got out of there in '97. In '97 I
11:00:00 14 moved to Jefferson, Texas, just down the road out in the
11:00:03 15 country. I started practicing in Marshall. I've been
11:00:06 16 practicing here in Marshall for 24 years.

11:00:08 17 A man named Gil Gillam hired me, gave me my first
11:00:13 18 job. After about eight or nine years, he made me his
11:00:17 19 partner, and we have been together every day in my 24 years
11:00:20 20 of practice.

11:00:20 21 We have a law firm that some of you probably drove
11:00:22 22 by today when you were driving to the courthouse. It's an
11:00:23 23 old yellow house that sits right behind this building.
11:00:26 24 It's called Gillam and Smith.

11:00:28 25 Personally, I am married. My husband's name is

11:00:31 1 Stephen. He is retired law enforcement, although he is
11:00:36 2 having a hard time giving it up, so he's a reserve officer
11:00:39 3 in Marion County right now. We have a seven-year-old girl,
11:00:43 4 I used to call her baby girl, but not a baby anymore, and a
11:00:47 5 nine-year-old little boy. So when I'm not doing this, I
11:00:50 6 try to spend every single minute with those folks.

11:00:52 7 Now, Judge Gilstrap gives us just precious little
11:00:57 8 time, just a few minutes to give you an overview of this
11:01:00 9 case. And what I'll tell you about this case is that Apple
11:01:03 10 takes these charges very, very seriously.

11:01:06 11 And the one thing you need to take away from this
11:01:09 12 visit with me is that it is Apple's position that they do
11:01:15 13 not, have never used the '091 patent in this case or any of
11:01:23 14 the ideas in the '091 patent.

11:01:25 15 Now, for those of you that are lucky enough to get
11:01:29 16 chosen and to hear this case all week, you're going to
11:01:33 17 hear -- you can -- and many of you -- some of you are
11:01:34 18 really young, but many of you, like me, can remember, the
11:01:39 19 Internet -- as I call it, the Internet explosion, when the
11:01:43 20 Internet became a part of all of our lives. And that
11:01:45 21 created problems, because with the Internet, immediately we
11:01:48 22 saw piracy, we saw hackers, and Apple had a problem.

11:01:53 23 Apple needed to secure the things that they needed
11:01:55 24 online, the books, the music, the apps that Ms. DeRieux
11:01:59 25 mentioned. They needed some security measure from those

11:02:03 1 hackers and the pirates. And the answer to that problem
11:02:05 2 was called FairPlay. And Ms. DeRieux mentioned FairPlay.
11:02:08 3 And you're going to hear a lot about that in this case.

11:02:10 4 Now, what you also hear is Personalized Media had
11:02:17 5 its own problems. And those problems are problems they had
11:02:21 6 back in the '80s. Different problems, different solution,
11:02:25 7 and very, very different technology from what Apple uses in
11:02:32 8 FairPlay.

11:02:32 9 Now, we asked you all if you knew anybody in the
11:02:36 10 room, but what we failed to ask you thus far is if you know
11:02:40 11 any of the lawyers in the room.

11:02:41 12 Before getting here today, did anyone have a
11:02:45 13 relationship or any knowledge of the Capshaw DeRieux firm,
11:02:49 14 Ms. DeRieux or her partner, Mr. Capshaw, by raising hands.
11:02:54 15 Anyone know that firm?

11:02:55 16 All right. Ms. DeRieux is joined today or for
11:03:00 17 those of you that get to serve on the case by a firm called
11:03:04 18 Goodwin Procter, and they have offices in DC and Boston.
11:03:08 19 Is anyone familiar with the Goodwin Procter firm?

11:03:14 20 No hands.

11:03:15 21 All right. Ms. Goodman, may I speak with you?
11:03:20 22 No. 3. While we're talking about lawyers, you probably
11:03:25 23 knew this was coming, didn't you?

11:03:27 24 JUROR GOODMAN: Ask it and we'll see.

11:03:30 25 MS. SMITH: Okay. You have some experience

11:03:32 1 working for a private firm; is that correct?

11:03:35 2 JUROR GOODMAN: I did.

11:03:35 3 MS. SMITH: Okay. And how long did you do that?

11:03:38 4 JUROR GOODMAN: 23 years.

11:03:39 5 MS. SMITH: All right. And that was the Nix law
11:03:42 6 firm; is that correct?

11:03:42 7 JUROR GOODMAN: Yes, ma'am.

11:03:43 8 MS. SMITH: All right. Now, the Nix law firm,
11:03:45 9 I've seen a lot of their billboards and their media and
11:03:48 10 stuff, and they don't often say, we're here to represent
11:03:51 11 the wrongly accused, do they?

11:03:53 12 JUROR GOODMAN: No.

11:03:54 13 MS. SMITH: They're Plaintiff's lawyers.

11:03:55 14 JUROR GOODMAN: Yes.

11:03:55 15 MS. SMITH: And so they sit over at the table just
11:03:58 16 like Ms. DeRieux's crew; is that correct?

11:04:00 17 JUROR GOODMAN: That's correct.

11:04:02 18 MS. SMITH: All right. Well, heart to heart, do I
11:04:04 19 have anything to worry about, because I'm over here
11:04:06 20 representing a Defendant, with putting you on this jury
11:04:09 21 when you spent 23 years working on the Plaintiff's side at
11:04:12 22 Nix?

11:04:14 23 JUROR GOODMAN: No.

11:04:14 24 MS. SMITH: I appreciate your honesty.

11:04:18 25 JUROR GOODMAN: You're welcome.

11:04:19 1 MS. SMITH: Now, I don't think -- we heard --
11:04:20 2 Ms. DeRieux told you that Personalized Media doesn't make
11:04:24 3 any products, and so I don't think you've heard of them
11:04:27 4 before. But has anybody ever, before getting in the
11:04:30 5 courthouse today, heard of Personalized Media by a showing
11:04:34 6 of hands?

11:04:42 7 Okay. I'm going to pivot off of one of
11:04:46 8 Ms. DeRieux's questions a little bit. She talked about if
11:04:50 9 you've ever been in a business dispute or land dispute or
11:04:53 10 something like that. Is there anyone in this room that's
11:04:56 11 never been wrongly accused of something? Not legally, just
11:05:02 12 in life. Raise your hands. You've never been wrongly
11:05:06 13 accused. Never been.

11:05:07 14 JUROR ENDSLEY: No.

11:05:08 15 MS. SMITH: You're a lucky man. Okay, I'm going to
11:05:10 16 talk to those of you that are -- I mean, this can be as
11:05:11 17 easy as -- you know, my kids are seven and nine and they
11:05:14 18 still haven't learned to replace the toilet paper when they
11:05:18 19 use the bathroom. So it can be, you know, an everyday
11:05:21 20 thing. But I'll -- I want to pick on someone we haven't
11:05:25 21 heard a lot from.

11:05:26 22 How about Ms. Parker.

11:05:29 23 Now, I don't want to know any details. I don't
11:05:34 24 want to know any details. But how did that make you feel
11:05:41 25 when you were wrongly accused?

11:05:44 1 JUROR KALEY PARKER: Oh, very upset.

11:05:46 2 MS. SMITH: Okay. And you stuck up for yourself;
11:05:47 3 did you not?

11:05:48 4 JUROR KALEY PARKER: Yes.

11:05:49 5 MS. SMITH: Okay. And if you were wrongly accused
11:05:50 6 of taking something, and I think Ms. DeRieux used the words
11:05:54 7 "substantial money involved," would you defend yourself?

11:05:56 8 JUROR KALEY PARKER: Definitely. Yeah.

11:05:57 9 MS. SMITH: Would you hesitate to go to court to
11:06:00 10 defend yourself?

11:06:01 11 JUROR KALEY PARKER: No.

11:06:01 12 MS. SMITH: Okay. Now, it's a little bit
11:06:03 13 different because Samsung is a company. Do you think
11:06:07 14 Samsung -- or Apple, excuse me, is a company -- that's a
11:06:09 15 slip -- Apple is a company. Do you -- is there any doubt
11:06:12 16 in your mind that Apple has every ability to show up in
11:06:15 17 court and defend itself, or any other company?

11:06:18 18 JUROR KALEY PARKER: No.

11:06:19 19 MS. SMITH: Thank you, ma'am.

11:06:20 20 Now, Ms. Black, Ms. DeRieux spoke to you about the
11:06:34 21 dispute you had with your husband's 903 Outdoor business;
11:06:42 22 is that correct?

11:06:42 23 JUROR BLACK: Yes, ma'am.

11:06:43 24 MS. SMITH: Okay. And you guys made a choice that
11:06:44 25 you weren't going to go to court; is that correct?

11:06:47 1 JUROR BLACK: Correct.

11:06:48 2 MS. SMITH: Is there anything about that choice
11:06:51 3 that would cause you to take issue with Apple in this case
11:06:52 4 because they have chosen to come to court and defend
11:06:55 5 themselves? I can take it, ma'am. I want you to speak --
11:07:06 6 speak your truth.

11:07:07 7 Because I'm trying to figure out who would be the
11:07:09 8 best fit for this panel. So if you think -- if you're
11:07:12 9 going to fault Apple here for coming to court and defending
11:07:16 10 itself, I'd like -- I'd rather know now than come Friday.

11:07:20 11 JUROR BLACK: Yeah. Yes, ma'am.

11:07:24 12 MS. SMITH: Okay. I appreciate your honesty.

11:07:26 13 Now, is there any --

11:07:30 14 And you can sit down.

11:07:31 15 JUROR BLACK: Okay.

11:07:31 16 MS. SMITH: Is there anyone else out there, and
11:07:34 17 all of you, all but one, except for lucky No. 34 out there,
11:07:38 18 have been accused of something that they haven't done
11:07:40 19 before? And is there anyone sitting out there that joins
11:07:44 20 Juror No. 28, Ms. Black, and says, you know what, there --
11:07:51 21 this shouldn't be a place where we hear these disputes. Is
11:07:54 22 there anyone that feels like that? Anyone that thinks
11:07:57 23 these things should just settle out of court?

11:08:01 24 Juror No. 5, Mr. Parker. We heard a little bit
11:08:05 25 from you about this. I think that you -- I read the same

11:08:10 1 quote, I think. In your juror questionnaire, you said
11:08:13 2 everything can be handled outside of court.

11:08:15 3 So where does that put you with Apple in this
11:08:17 4 case?

11:08:18 5 JUROR JAMES PARKER: In the same guidelines.

11:08:19 6 MS. SMITH: Okay. You understand Apple doesn't
11:08:21 7 want to be in this court, and we're not here by choice?

11:08:26 8 JUROR JAMES PARKER: I understand that.

11:08:28 9 MS. SMITH: And do you fault Apple for having to
11:08:31 10 come to court and defend itself?

11:08:33 11 JUROR JAMES PARKER: I will fault them for not
11:08:35 12 trying to find a reasonable solution with the -- I guess
11:08:39 13 you'd call them the Plaintiff.

11:08:41 14 MS. SMITH: Okay. Thank you. Thank you. Thank
11:08:44 15 you, sir.

11:08:44 16 All right. Let's see. Ms. Haley, Juror No. 2.
11:08:58 17 You've raised four kids. We met one of them, right?

11:09:02 18 JUROR HALEY: Yeah.

11:09:04 19 MS. SMITH: All right. Carving out Ms. Gibbons
11:09:07 20 from this, because I'm sure she never got any squabbles
11:09:11 21 with her brothers and sisters, right?

11:09:13 22 JUROR HALEY: There was plenty.

11:09:14 23 MS. SMITH: Okay. Let's work with that.

11:09:17 24 So when you were bringing up Ms. Gibbons and her
11:09:21 25 brothers and sisters, they obviously had fights, did they

11:09:24 1 not?

11:09:24 2 JUROR HALEY: Oh, yes.

11:09:25 3 MS. SMITH: Okay. And did you find that it's

11:09:27 4 almost instinctive that when they -- when a fight breaks

11:09:31 5 out, they have this urge to be the first one to tell you

11:09:34 6 their side of the story?

11:09:35 7 JUROR HALEY: (Nods head affirmatively.)

11:09:37 8 MS. SMITH: Would you?

11:09:38 9 JUROR HALEY: Yes.

11:09:39 10 MS. SMITH: So they get in a fight and they race

11:09:41 11 to you to tell their side of the story first, right?

11:09:44 12 JUROR HALEY: Yes.

11:09:44 13 MS. SMITH: As a good momma, did you just take

11:09:47 14 that first story and not listen to any of the rest?

11:09:51 15 JUROR HALEY: No.

11:09:51 16 MS. SMITH: Why not?

11:09:52 17 JUROR HALEY: Because I never knew which one was

11:09:54 18 telling me the truth. It was -- and that was always hard

11:09:58 19 to figure out.

11:09:59 20 MS. SMITH: Okay. And as you might guess, this

11:10:06 21 trial is going to run just like that. The Plaintiff always

11:10:07 22 gets to speak first.

11:10:08 23 JUROR HALEY: Yes.

11:10:09 24 MS. SMITH: And they're going to -- they're good

11:10:10 25 lawyers, they're going to say a lot of smart things, but

11:10:13 1 will you wait until Apple speaks to make up your mind?

11:10:16 2 JUROR HALEY: Yes.

11:10:16 3 MS. SMITH: Thank you, ma'am. I appreciate it.

11:10:18 4 What do you have to say about that, Mr. Jones?

11:10:21 5 Can you agree to wait until you hear the whole side of the

11:10:24 6 story before you make up your mind?

11:10:26 7 JUROR JONES: Yes, I do.

11:10:29 8 MS. SMITH: Okay. I appreciate that, sir.

11:10:32 9 Everyone else on the first row, I'm going to call

11:10:36 10 it Mr. Jones's row, by raising hands, can you all wait --

11:10:41 11 commit to wait until you've heard all the evidence in the

11:10:43 12 case to make up your mind? Raise your hands.

11:10:47 13 Alright. Ms. Goodman.

11:10:49 14 Mr. Overstreet, do you have an opinion about that?

11:10:53 15 Let's hear from you, Mr. Overstreet. We haven't heard from

11:10:55 16 you much today.

11:10:56 17 JUROR OVERSTREET: I don't use apps. I just use

11:11:04 18 my phones for emergency --

11:11:07 19 THE COURT: Just a minute. I can't hear you,

11:11:09 20 Mr. Overstreet. I don't know if that mic is not working,

11:11:11 21 your mask is not down.

11:11:13 22 JUROR OVERSTREET: Hello, hello. It's not

11:11:16 23 working.

11:11:17 24 THE COURT: Hand it back to the Court Security

11:11:18 25 Officer. Sometimes they get pushed off by mistake when

11:11:21 1 they're passed around.

11:11:25 2 Let's get the other microphone.

11:11:33 3 JUROR OVERSTREET: I don't -- I don't --

11:11:35 4 MS. SMITH: Yes --

11:11:36 5 JUROR OVERSTREET: Oh, hello.

11:11:38 6 MS. SMITH: Yes, sir.

11:11:46 7 JUROR OVERSTREET: Okay.

11:11:47 8 MS. SMITH: Thank you.

11:11:48 9 JUROR OVERSTREET: No, I -- I don't -- I don't

11:11:50 10 know nothing about -- you know, really about Apple or any

11:11:52 11 other -- you know, what's on -- you know, really --

11:11:56 12 MS. SMITH: Okay.

11:11:58 13 JUROR OVERSTREET: -- about Apple because I don't

11:11:59 14 have Apple on my phone.

11:12:01 15 MS. SMITH: All right. Well, you sat through

11:12:03 16 another patent trial, did you not?

11:12:05 17 JUROR OVERSTREET: Yes.

11:12:05 18 MS. SMITH: And what was the subject matter of

11:12:08 19 that trial?

11:12:08 20 JUROR OVERSTREET: That subject was about UPS --

11:12:14 21 MS. SMITH: Okay.

11:12:14 22 JUROR OVERSTREET: -- Yeah -- not UPS but -- let

11:12:18 23 me think what it was -- something to do -- I believe it was

11:12:25 24 something to do with --

11:12:26 25 MS. SMITH: Well, it was -- let me help you. It

11:12:29 1 was a patent case, and before you walked into that case,
11:12:31 2 did you know much about patents?

11:12:33 3 JUROR OVERSTREET: No.

11:12:34 4 MS. SMITH: But I bet -- you said you sat through
11:12:37 5 a good deal of that trial, right?

11:12:39 6 JUROR OVERSTREET: Yes.

11:12:39 7 MS. SMITH: Up to the bitter end?

11:12:42 8 JUROR OVERSTREET: Just like this right here.

11:12:45 9 MS. SMITH: Right. And you learned a whole lot
11:12:47 10 about patents in that case --

11:12:48 11 JUROR OVERSTREET: Yeah.

11:12:48 12 MS. SMITH: -- did you not?

11:12:48 13 JUROR OVERSTREET: Yeah.

11:12:49 14 MS. SMITH: And so I promise you here that you'll
11:12:51 15 learn a whole lot about apps but my question was a little
11:12:53 16 bit different. It was, just like in that other jury
11:12:54 17 service you had, can you wait until you hear from the
11:12:55 18 Plaintiff and the Defendant before you make up your mind?

11:12:58 19 JUROR OVERSTREET: Yeah.

11:12:58 20 MS. SMITH: Okay. I appreciate that,
11:13:01 21 Mr. Overstreet.

11:13:01 22 All right. I want to talk a little bit about
11:13:05 23 Apple products.

11:13:07 24 So we're lucky to have many, many of you as
11:13:11 25 customers, but I want to see by a showing of hands again

11:13:16 1 who the Apple customers are. Who owns Apple products right
11:13:19 2 now?

11:13:19 3 All right. Now keep your hands up if you are not
11:13:25 4 satisfied in some way with your Apple products.

11:13:29 5 Juror No. 18, Mr. Groce. Tell me about that.

11:13:35 6 JUROR GROCE: I used to own an Apple phone. I
11:13:41 7 didn't like it. I'm not very good with technology. My
11:13:45 8 daughter owns an Apple phone. And she don't like it. I
11:13:50 9 have an Apple iPad, and I don't like it.

11:13:55 10 MS. SMITH: Okay. Well, that's obviously tough
11:13:58 11 stuff for me to hear as I stand here in front of you
11:14:02 12 representing Apple.

11:14:03 13 JUROR GROCE: Again, I'm not very good in
11:14:06 14 technology. If it's not simple, then I lose patience with
11:14:09 15 it.

11:14:10 16 MS. SMITH: Okay. Well, Mr. Groce, and my
11:14:12 17 question is going to be this, knowing that you've had a
11:14:14 18 negative experience with a series, not one, but many Apple
11:14:18 19 products, and I -- on behalf of Apple, I apologize for
11:14:22 20 that, but in this trial, do you think you might be a better
11:14:26 21 fit for a different trial, and I'll have you know, this
11:14:29 22 won't be the last jury summons you ever get, but you might
11:14:33 23 be a better fit for a different trial that didn't involve
11:14:37 24 Apple given your negative opinions of Apple products.

11:14:39 25 JUROR GROCE: I don't know. I'd have to know the

11:14:41 1 trial.

11:14:42 2 MS. SMITH: Okay. Okay. Fair enough. Thank you,
11:14:43 3 sir. Appreciate it.

11:14:44 4 All right. Ms. Gibbons, you didn't raise your
11:14:51 5 hand, but you had a discussion with Ms. DeRieux about your
11:14:54 6 Apple tablet. You said that you felt that Apple was a
11:15:00 7 little bit overrated. I think I -- I tried to listen
11:15:03 8 closely. I think I wrote that down right.

11:15:07 9 JUROR GIBBONS: Yes, ma'am.

11:15:08 10 MS. SMITH: Okay. Tell me about your feelings.

11:15:10 11 JUROR GIBBONS: I just think they're complicated
11:15:12 12 to me. You got to have a certain iTunes account to even
11:15:16 13 get on there and do anything. And they're just not like
11:15:19 14 the Androids that I like. And my husband has an Apple as
11:15:22 15 of right now that he -- I got him for Christmas, and he is
11:15:26 16 currently looking into another Android because he's not
11:15:29 17 satisfied either.

11:15:29 18 MS. SMITH: Knowing all of that, same question as
11:15:33 19 I had for Mr. Groce, do you think you might be a better
11:15:35 20 fit, knowing that you've had these negative experiences
11:15:38 21 with Apple, do you think you might be a better fit for a
11:15:41 22 different kind of case?

11:15:41 23 JUROR GIBBONS: I would like to think that I
11:15:43 24 wouldn't -- just because of the dislikes that I have with
11:15:47 25 their product doesn't mean that -- they're still people so,

11:15:50 1 I mean --

11:15:50 2 MS. SMITH: And I guarantee you, I'm not going to
11:15:52 3 ask you to use an Apple product if you're chosen for this
11:15:56 4 case. Do we have that deal?

11:15:59 5 JUROR GIBBONS: Deal.

11:16:00 6 MS. SMITH: Okay. Thank you, ma'am. I appreciate
11:16:01 7 it.

11:16:01 8 All right. You've heard -- there's going to be a
11:16:03 9 lot of patents in this case. You're going to hear about, I
11:16:06 10 think, probably six Apple patents, and you're going to hear
11:16:08 11 about one on the PMC side, as well.

11:16:09 12 I think I saw on some of the questionnaires that
11:16:12 13 you guys -- some of you had some inventors in the family.

11:16:15 14 Let's see, Juror No. 33, Ms. Carter. There we go.
11:16:21 15 Haven't heard from you today. Ms. Carter, I noticed on
11:16:26 16 your questionnaire that you'd said that patents last too
11:16:29 17 long, and that you had an uncle that had a patent. Tell me
11:16:33 18 about that.

11:16:33 19 JUROR DAVIS: I have two uncles. One invented
11:16:37 20 a -- it was something to do with covering coal, loads of
11:16:42 21 coal as they -- I don't know -- I don't know all the
11:16:44 22 details.

11:16:44 23 The other one invented some kind of a basketball
11:16:48 24 goal, portable, movable, whatever, one, various sizes, with
11:16:54 25 his son. And they both got them patented and did whatever.

11:16:58 1 And my -- my objection to the length is that 20
11:17:02 2 years made great sense long ago. But in -- you know, and,
11:17:09 3 again, I'm an economist.

11:17:10 4 MS. SMITH: Okay.

11:17:11 5 JUROR CARTER: This is my thing, so that's
11:17:13 6 where -- you know, lots of these things. It just -- in
11:17:16 7 this day and age, 20 years is an awful long time in the
11:17:21 8 life of a company or a product or anything else to own that
11:17:27 9 intellectual property.

11:17:29 10 MS. SMITH: So you'd probably agree if we have a
11:17:31 11 patent -- let's say we have a patent from the '80s, like a
11:17:34 12 1987 patent, you probably would have a hard time thinking
11:17:38 13 that that patent applied to a 2021 product?

11:17:43 14 JUROR CARTER: At 20 years, isn't it already
11:17:47 15 expired? Isn't that irrelevant? I mean, right, I guess.

11:17:52 16 MS. SMITH: I don't want to get -- delve into
11:17:54 17 patent law.

11:17:55 18 JUROR DAVIS: Okay.

11:17:55 19 MS. SMITH: But that wouldn't make sense to you,
11:17:59 20 would it?

11:17:59 21 JUROR DAVIS: No.

11:17:59 22 THE COURT: And to the extent we can all talk one
11:18:02 23 at a time, it would be helpful.

11:18:04 24 MS. SMITH: All right. I apologize, Your Honor.

11:18:06 25 THE COURT: Let's continue.

11:18:07 1 JUROR CARTER: I'm sorry.

11:18:07 2 MS. SMITH: Thank you, ma'am.

11:18:08 3 Juror No. 22, Ms. Fruia, did I say that right?

11:18:12 4 JUROR FRUIA: Fruia.

11:18:13 5 MS. SMITH: Fruia. Third time is a charm,

11:18:16 6 Ms. Fruia.

11:18:17 7 JUROR FRUIA: That's fine.

11:18:18 8 MS. SMITH: Okay. Do you have an inventor in the

11:18:19 9 family?

11:18:21 10 JUROR FRUIA: My had father had a patent on a

11:18:26 11 fishing product. It was called the Keeper. It was a

11:18:30 12 measurement tool that fishermen could mount to a boat, and

11:18:35 13 they could measure a fish to see if they needed to throw it

11:18:38 14 back or not.

11:18:39 15 MS. SMITH: And ultimately did he make a product

11:18:40 16 with that.

11:18:41 17 JUROR FRUIA: Yes, yes, ma'am.

11:18:42 18 MS. SMITH: All right. So and he never -- was he

11:18:51 19 ever involved in litigation?

11:18:53 20 JUROR FRUIA: Not to my knowledge.

11:18:54 21 MS. SMITH: Okay.

11:18:54 22 JUROR FRUIA: This was in the '70s when it was

11:18:56 23 invented.

11:18:56 24 MS. SMITH: Okay. Thank you, ma'am.

11:18:59 25 JUROR FRUIA: Uh-huh.

11:18:59 1 MS. SMITH: Juror No. 13, Mr. Rand? I believe

11:19:08 2 your brother is an inventor; is that correct?

11:19:11 3 JUROR RAND: Yes. Yes.

11:19:12 4 MS. SMITH: What's your brother do?

11:19:14 5 JUROR RAND: He's a computer programmer and a

11:19:18 6 language programmer. He does both.

11:19:22 7 MS. SMITH: All right. Okay, tell me a little bit

11:19:24 8 about his invention.

11:19:25 9 JUROR RAND: It was for a new language, back in

11:19:29 10 the '80s. He invented a new language where computers could

11:19:34 11 talk to each other.

11:19:35 12 MS. SMITH: Okay. All right. And did -- this was

11:19:38 13 a software program?

11:19:40 14 JUROR RAND: Yes.

11:19:41 15 MS. SMITH: And was he eventually able to sell

11:19:42 16 that program to people or put it in some type of product?

11:19:47 17 JUROR RAND: He got a patent on it. I don't think

11:19:49 18 it's ever been sold or used.

11:19:51 19 MS. SMITH: Okay. And did he ever sue anybody

11:19:54 20 with it?

11:19:55 21 JUROR RAND: No. No, no.

11:19:57 22 MS. SMITH: Okay. Thank you, sir.

11:19:58 23 JUROR RAND: Yes, ma'am.

11:19:59 24 MS. SMITH: Now, the next set of questions, when

11:20:01 25 my partner was teaching me how to do voir dire, he said the

11:20:07 1 best way to get to know a big group of people in a room
11:20:11 2 like this is to have them tell you how they see themselves.

11:20:14 3 So the first question I have for you, we've got
11:20:18 4 some people who make quick decisions. They can just make
11:20:21 5 decisions like this. Good, bad or otherwise, they're
11:20:23 6 always quick. Other people who take some time and want to
11:20:25 7 take every little detail. By raise of hands, and I'm just
11:20:29 8 going to call out numbers, who are my quick decisionmakers
11:20:33 9 in my group?

11:20:36 10 All right. I've got Ms. Fruia, and on the back
11:20:39 11 row, Ms. Ferguson, Mr. Driggers, Mr. Berryhill. Did I get
11:20:43 12 that right?

11:20:45 13 All right. Showing of hands, who are my folks
11:20:48 14 that take time, give everything thoughtful consideration?
11:20:52 15 Is that everyone else? I just want to make sure I get a
11:20:54 16 hand from everybody. All right. Thank you all.

11:20:56 17 A little bit different question. Some people
11:21:03 18 seek out leadership positions. Some people are always the
11:21:08 19 persons that others want to be leaders. So there are
11:21:10 20 leaders and then there are folks that are fine just being
11:21:12 21 part of the group. Who are my -- who would say, I'm a
11:21:17 22 leader? All right. We've got a lot of leaders in there.

11:21:20 23 Okay. 1, sorry, 7, 8, 9, 10, 11, 13, 18, 23, and
11:21:32 24 Ms. Fruia. And then I've got some on the back row. Thank
11:21:36 25 you. Thank you, guys.

11:21:39 1 Who would put themselves in a category of having
11:21:43 2 kind of special technical knowledge by raising hands?
11:21:46 3 Mr. Cox; is that right? Mr. Cox.

11:21:51 4 And who else do I have? On the first three rows,
11:21:53 5 Mr. Cox, Ms. Rand, anybody else?

11:21:57 6 Okay. Mr. Cox, can you tell me why you say that?
11:22:00 7 They're coming with the mic.

11:22:02 8 JUROR COX: Just working with electronics and
11:22:07 9 instrumentation, computers.

11:22:09 10 MS. SMITH: All right. Self-taught?

11:22:12 11 JUROR COX: No, college education.

11:22:14 12 MS. SMITH: Okay. What was your major.

11:22:17 13 JUROR COX: Electronics.

11:22:18 14 MS. SMITH: Okay. And when you -- remind you what
11:22:20 15 you do -- what you did for work or do for work.

11:22:24 16 JUROR COX: Instrumentation.

11:22:25 17 MS. SMITH: Okay. And where do you do that?

11:22:27 18 JUROR COX: American Electric Power.

11:22:30 19 MS. SMITH: And does that flow over into friends
11:22:31 20 and family, when someone needs something fixed, you're the
11:22:32 21 guy that's going to do it.

11:22:34 22 JUROR COX: If I can't get out of it, yes.

11:22:36 23 MS. SMITH: Okay. Okay. Are you the guy that
11:22:38 24 typically -- I've never read an owner's manual in my life.
11:22:38 25 Are you the guy that will read -- read the manual and

11:22:41 1 figure out how to -- how to fix things?

11:22:45 2 JUROR COX: If all else fails, read the
11:22:48 3 directions.

11:22:48 4 MS. SMITH: Okay. Thank you, sir. I appreciate
11:22:49 5 that.

11:22:50 6 Mr. Rand, I -- thank you.

11:22:52 7 No. 13. I know where your brother puts himself in
11:22:58 8 that category. Tell me about your experience.

11:23:00 9 JUROR RAND: Well, I do -- I work steam boiling
11:23:06 10 engineering, fabrication. And this involves electronics --
11:23:16 11 fire, pressure, you just got to do a maze of things.
11:23:20 12 You've got to know -- and you got to -- if something -- if
11:23:22 13 safety feature go down, you got to react quickly.

11:23:25 14 And then the question that was I asked earlier,
11:23:28 15 then sometimes you have to let it -- you have to just sit
11:23:30 16 back and monitor things instead of making a quick decision
11:23:33 17 because it could be a wrong decision, because it's a
11:23:37 18 dangerous job.

11:23:38 19 MS. SMITH: Right.

11:23:39 20 JUROR RAND: But you've got to know electronics.
11:23:41 21 Again, pressures, safety features, why this does this,
11:23:46 22 that, and...

11:23:47 23 MS. SMITH: Okay.

11:23:48 24 THE COURT: Five minutes remaining.

11:23:50 25 MS. SMITH: Thank you, Mr. Rand.

11:23:52 1 JUROR RAND: Yes, ma'am.

11:23:53 2 MS. SMITH: Has anyone ever gotten a call from a
11:23:57 3 telemarketer? Has anybody not gotten a call? I need to
11:24:03 4 talk to you about how not to get those.

11:24:05 5 Let's see, Ms. Smith, let's talk to you.

11:24:07 6 When a telemarketer calls, a salesman of some
11:24:12 7 sorts and you don't want what they're selling and you don't
11:24:15 8 need what they're selling, do you have -- do you hesitate
11:24:17 9 to tell them "no, thank you."

11:24:19 10 JUROR SMITH: No.

11:24:20 11 MS. SMITH: Okay. I expect you'd agree that
11:24:22 12 companies have the same ability, when a salesman comes
11:24:25 13 knocking at the door, to say "no, thank you" if they don't
11:24:28 14 want it and they don't need it? Would you agree with that?

11:24:31 15 JUROR SMITH: That is correct.

11:24:31 16 MS. SMITH: Thank you, Ms. Smith.

11:24:32 17 Does everyone agree with Ms. Smith that companies
11:24:36 18 have the same rights as individuals to say we don't want it
11:24:38 19 and we don't need it?

11:24:40 20 All right. Thank y'all.

11:24:45 21 Ms. DeRieux said that they're going to ask you --
11:24:46 22 she was a little bit shy about the amount. I didn't hear
11:24:47 23 an amount. But she said they were going to ask for a
11:24:51 24 substantial or large amount of money.

11:24:53 25 And my question is this -- and I'll say, you know,

11:24:57 1 she's a good lawyer. They're going to be good lawyers on
11:25:00 2 the other side. They're going to put up a good case. But
11:25:03 3 if the Plaintiff does not -- spends five days in this
11:25:08 4 courthouse and does not meet their burden -- and Judge
11:25:11 5 Gilstrap will tell you more about the burden -- but if the
11:25:14 6 Plaintiff doesn't meet their burden, can everyone commit to
11:25:19 7 giving them zero, by a showing of hands?

11:25:22 8 No one is out there saying, you know, they showed
11:25:24 9 up, they tried. They gave it their best shot. They should
11:25:29 10 deserve something. Kind of an award for second place. Is
11:25:32 11 there anyone that's thinking that way?

11:25:32 12 Ms. Goodman.

11:25:36 13 Bad question. You're not thinking, well, gosh,
11:25:39 14 they showed up. They're good lawyers. They put on a case,
11:25:43 15 they tried. They should deserve something.

11:25:43 16 Thank you. Thanks.

11:25:43 17 All right. I didn't share -- some of you may have
11:25:49 18 noted that I didn't share my own personal jury service with
11:25:52 19 you, and so I'll share it now. I have been on a jury. And
11:25:56 20 this ties into my last question. I was on a jury when two
11:26:00 21 lawyers, that I still question today, thought I would be a
11:26:03 22 good fit for the jury. It was a criminal case about a harm
11:26:07 23 to a very, very young child.

11:26:10 24 It was over in Marion County in State Court, and I
11:26:14 25 was about -- I felt like I was 10 months pregnant -- but I

11:26:18 1 was eight and a half months pregnant, and obviously
11:26:22 2 pregnant, and these lawyers thought that I would be a good
11:26:25 3 juror for some reason to sit on a case about someone
11:26:27 4 hurting a small baby.

11:26:29 5 So my question is this, they should have known
11:26:31 6 better. But is there anything -- any question I haven't
11:26:37 7 asked -- you've heard a little bit about the case from each
11:26:41 8 side. Is there anything that you want to tell me, anything
11:26:44 9 that I should know about you not being a good fit for this
11:26:48 10 panel or anything that Ms. DeRieux has said that causes you
11:26:51 11 to kind of start leaning toward the Plaintiff before you're
11:26:54 12 even selected for the case? I don't always know the right
11:26:58 13 questions.

11:26:59 14 Ms. Nolan. I know your brother. I go back about
11:27:04 15 two decades with Brent, so.

11:27:07 16 JUROR NOLAN: I just want to make that clear.

11:27:08 17 MS. SMITH: And I appreciate that. I should have
11:27:10 18 talked to you earlier.

11:27:11 19 And on that -- on that note, same question for
11:27:14 20 Ms. Goodman. I mean, you've -- he does Plaintiff's work.
11:27:18 21 He's -- I've never seen a Goudarzi and Young billboard that
11:27:25 22 says we represent the wrongfully accused, right? So you'd
11:27:29 23 probably start out leaning a little towards the Plaintiff's
11:27:30 24 side?

11:27:31 25 JUROR NOLAN: I'm very fair and impartial.

11:27:33 1 MS. SMITH: Well I appreciate that. Thank you,
11:27:34 2 ma'am.

11:27:34 3 No further questions. And thank you all again for
11:27:37 4 your time this morning.

11:27:39 5 Thank you, Your Honor.

11:27:41 6 THE COURT: Thank you, counsel.

11:27:43 7 Ladies and gentlemen, part of this process is
11:27:47 8 going to be requiring that there will be times I need to
11:27:52 9 talk to the lawyers outside of your presence.

11:27:54 10 Ordinarily, before we had a pandemic, I would
11:27:59 11 simply call them up here to the bench where you couldn't
11:28:02 12 hear them and we would talk quietly to each other at the
11:28:05 13 bench. We can't do that in today's environment.

11:28:08 14 So I'm going to have to meet with the lawyers and
11:28:10 15 the court reporter in the jury room for a few minutes. And
11:28:12 16 then after I meet with them, it's possible that some of you
11:28:16 17 may be brought in to let me talk with you there one at a
11:28:21 18 time, and you'll be brought in and taken back to your
11:28:24 19 position by our Court Security Officers.

11:28:25 20 While I'm out of the courtroom, you should keep
11:28:27 21 your mask on. You should stay in your seats. You can, if
11:28:31 22 you would like to, have a quiet discreet conversation with
11:28:35 23 your neighbor to either side of you if you want to. You
11:28:37 24 don't have to.

11:28:39 25 If you have a conversation with somebody in the

11:28:44 1 courtroom today, don't talk about anything that's happened
11:28:46 2 with regard to the case. Talk about the weather, talk
11:28:50 3 about your grandchildren, talk about a sports team,
11:28:54 4 anything you'd like to discuss, but don't talk about
11:28:57 5 anything involving the case. Because let me tell you, you
11:29:00 6 have heard absolutely no evidence in this case whatsoever.
11:29:04 7 So don't talk about anything related to the case while I'm
11:29:07 8 out of the courtroom.

11:29:08 9 The Court Security Officers are going to be
11:29:10 10 checking with you while I'm out of the courtroom to see if
11:29:13 11 anyone needs a restroom break, and they'll be taking you in
11:29:16 12 very small groups to maintain social distancing. If you
11:29:20 13 do, if you have an issue with that while I'm out of the
11:29:24 14 courtroom, just get the attention of one of the Court
11:29:27 15 Security Officers, and they'll work with you on that.

11:29:28 16 So if you will give me a little bit of time, I'll
11:29:31 17 be back in the courtroom as soon as I can.

11:29:35 18 At this time, I'll meet counsel and the court
11:29:37 19 reporter in the jury room.

11:29:48 20 (Conference outside of the presence of the jury.)

11:31:04 21 THE COURT: Ms. DeRieux, does Plaintiff have any
11:31:36 22 challenges for cause?

11:31:38 23 MS. DERIEUX: Yes, sir. We challenge Juror No. 1,
11:31:40 24 Mr. Jones, based on -- and these are my notes --

11:31:46 25 THE COURT: Just give me the names right now.

11:31:49 1 MS. DERIEUX: Okay. And No. 5, Mr. Parker.

11:31:52 2 THE COURT: Anybody else?

11:31:53 3 MS. DERIEUX: No, sir.

11:31:54 4 THE COURT: All right.

11:31:54 5 Ms. Smith, do Defendants challenge anybody for
11:31:57 6 cause.

11:31:57 7 MS. SMITH: Yes, Your Honor. 2, 5, 16, and 18.

11:31:59 8 THE COURT: All right. Do we have anybody on here
11:32:17 9 that based on the question about ownership of individual
11:32:21 10 shares of Apple stock, that anybody believes should be
11:32:26 11 disqualified as a matter of law?

11:32:30 12 MS. SMITH: I believe they were all held in mutual
11:32:33 13 funds. We -- we're not challenging.

11:32:34 14 THE COURT: Clearly mutual funds that might own
11:32:37 15 shares of Apple are not an issue. I just wanted to verify.
11:32:41 16 I don't want to get into this trial and then somebody says,
11:32:44 17 oops, this juror owns Apple stock and they should be
11:32:47 18 disqualified. Okay.

11:32:49 19 MS. DERIEUX: Based on my notes, we didn't have
11:32:51 20 any challenges on the stock question.

11:33:01 21 THE COURT: Mr. Quarles, No. 9, didn't say he own
11:33:05 22 Apple stock. He's retired from Pirkey Power Plant.

11:33:06 23 MS. DERIEUX: He did. My understanding was it was
11:33:09 24 a mutual found.

11:33:10 25 MS. SMITH: That's my understanding as well.

11:33:13 1 MS. DERIEUX: He came back -- he was the one that
11:33:13 2 after the others started talking about mutual funds, he
11:33:17 3 came back and raised his hand and said something like, me
11:33:19 4 too, was my understanding of his statement.

11:33:21 5 THE COURT: Okay. I just would rather be careful
11:33:26 6 now than have a problem later.

11:33:28 7 MS. DERIEUX: I agree, Your Honor. I was trying
11:33:30 8 to keep those hands up and catch everybody.

11:33:33 9 THE COURT: All right. We obviously don't have
11:33:35 10 anybody that raised their hand with a scheduling issue that
11:33:37 11 we need to address.

11:33:38 12 Let me ask this, you both challenged Mr. Parker,
11:33:55 13 Venire Member No. 5, for cause. Do you want to agree that
11:34:03 14 he should be excused, or do you want me to bring him back
11:34:06 15 here and question him about his ability to be fair?

11:34:09 16 MS. DERIEUX: I'm satisfied that we just agree.

11:34:11 17 MS. SMITH: I'd like to agree.

11:34:12 18 THE COURT: Okay. Then by agreement of the
11:34:14 19 parties, Mr. Parker, No. 5, is excused.

11:34:18 20 MS. SMITH: Your Honor, I have a question about 2
11:34:20 21 and 16. This is -- I've never had a mother/daughter duo
11:34:25 22 on -- it's not really a challenge as to each person
11:34:28 23 individually. It's the fact that the daughter said she
11:34:31 24 couldn't -- she couldn't do anything contrary to what her
11:34:35 25 mom did. So I don't know exactly how to conduct that

11:34:38 1 challenge. It's more of a group --

11:34:40 2 THE COURT: I've never had it happen before --

11:34:42 3 MS. SMITH: -- challenge.

11:34:44 4 THE COURT: -- but it may very well be the case
11:34:49 5 the mother can do whatever she wants to do and not be
11:34:52 6 influenced by the daughter, but the daughter doesn't feel
11:34:55 7 she can do what she needs to do without being influenced by
11:34:58 8 the mother.

11:34:58 9 I'm happy to talk to them both but I think we're
11:34:59 10 just going to -- I'm just going to have to put the question
11:35:00 11 to them and have them say whether that would be an
11:35:03 12 impediment to them being fair or impartial to both sides or
11:35:11 13 whether it wouldn't.

11:35:11 14 MS. SMITH: Okay. My focus was more on the
11:35:15 15 daughter, I think.

11:35:15 16 THE COURT: I've had cousins before and I've had
11:35:15 17 uncles and nephews before. I've never had a parent and a
11:35:16 18 child before. But I think in any of those cases of some
11:35:18 19 familial relationship, you just have to ask each member
11:35:22 20 about their ability to be fair and impartial if the other
11:35:27 21 family member were to end up on the jury.

11:35:29 22 Is that the only basis you're challenging No. 2
11:35:36 23 on?

11:35:36 24 MS. SMITH: Yes, Your Honor.

11:35:37 25 THE COURT: Okay. And I would assume you might

11:35:39 1 have another basis to challenge No. 16?

11:35:42 2 MS. SMITH: Yes, Your Honor.

11:35:42 3 THE COURT: Okay. Are there any other questions
11:35:44 4 from counsel to the Court before I start bringing these
11:35:48 5 folks in and visiting with them?

11:35:52 6 MS. DERIEUX: Nothing from Plaintiff. Thank you.

11:35:55 7 MS. SMITH: No, Your Honor.

11:35:56 8 THE COURT: Okay. All right. Let's ask the Court
11:35:58 9 Security Officer to bring in Panel Member No. 1, Mr. Jones.

11:36:16 10 (Juror brought into jury room.)

11:36:57 11 THE COURT: Come in, Mr. Jones.

11:36:59 12 JUROR JONES: Yes, sir.

11:37:00 13 THE COURT: If you wouldn't mind, have a seat
11:37:02 14 right there, sir.

11:37:02 15 JUROR JONES: Yes, sir.

11:37:02 16 THE COURT: Thank you.

11:37:04 17 Mr. Jones, I have in my notes that when asked
11:37:08 18 about the position of a party that owned a patent but
11:37:11 19 didn't manufacture a product, you said that a
11:37:15 20 non-manufacturing patent owner would be at a disadvantage
11:37:18 21 in your mind. I think you said, if I wrote this down
11:37:23 22 properly, they just owned a piece of paper.

11:37:25 23 Now, I also heard you say that you'd listen to the
11:37:28 24 evidence from both sides of the case before you made up
11:37:30 25 your mind on any issues. But I guess my question to you

11:37:35 1 is, clearly, the Plaintiff here owns a patent or they
11:37:39 2 wouldn't have the right to bring this lawsuit. But they --
11:37:42 3 by their own admission don't make a product.

11:37:45 4 JUROR JONES: Right.

11:37:46 5 THE COURT: Are you going to be able to treat the
11:37:48 6 Plaintiff just as fairly as you treat the Defendant, and
11:37:51 7 will they both start out in an equal position so that you
11:37:54 8 won't treat either of them differently until you start
11:37:59 9 hearing the evidence, and as you said clearly and
11:38:02 10 rightfully so, and you won't make any final decisions until
11:38:06 11 you hear all the evidence.

11:38:07 12 Or is there something about the fact that the
11:38:10 13 Plaintiff not making a product would cause you not to be
11:38:12 14 able to treat the Plaintiff and the Defendant just alike
11:38:16 15 and starting out even.

11:38:18 16 JUROR JONES: No, sir, there's not. It just, it
11:38:20 17 kind of fell with the question she had about the
11:38:23 18 landowners, where, you know, if someone come in and drilled
11:38:25 19 on your land, would you be upset? Well, if you don't own
11:38:28 20 the mineral rights but you own the land, you can't say
11:38:32 21 nothing --

11:38:33 22 THE COURT: Well, sometimes lawyers don't ask
11:38:35 23 great questions. I was guilty of that many, many times.

11:38:38 24 JUROR JONES: That was where I was.

11:38:40 25 THE COURT: Okay. So you could treat the

11:38:41 1 Plaintiff, PMC, and the Defendant, Apple, just the same
11:38:45 2 even though there's no question in anybody's mind that
11:38:48 3 Apple makes products, PMC doesn't make products?

11:38:51 4 JUROR JONES: Yes.

11:38:53 5 THE COURT: You could listen to the evidence and
11:38:55 6 make your decision based solely on the evidence from both
11:38:59 7 sides.

11:38:59 8 JUROR JONES: Yes, sir.

11:39:00 9 THE COURT: Okay. Mr. Jones.

11:39:01 10 Any questions for Mr. Jones from Ms. DeRieux?

11:39:05 11 MS. DERIEUX: Nothing further. Thank you.

11:39:06 12 THE COURT: Okay. I'm going to let you return to
11:39:10 13 your seat out there, Mr. Jones. Just don't discuss
11:39:12 14 anything we've talked about in here.

11:39:14 15 JUROR JONES: Yes, sir.

11:39:14 16 THE COURT: Thank you very much.

11:39:16 17 JUROR JONES: Thank you.

11:39:16 18 (Juror excused to return to the courtroom.)

11:39:16 19 THE COURT: Let's bring in No. 2, Ms. Haley.

11:39:21 20 Mr. Jones is not excused.

11:39:45 21 (Juror brought into jury room.)

11:39:45 22 THE COURT: Good morning, Ms. Haley.

11:39:50 23 JUROR HALEY: Good morning.

11:39:51 24 THE COURT: Would you come in and have a seat
11:39:52 25 right there? Thank you.

11:39:53 1 Ms. Haley, I've been on the bench 10 years in
11:39:58 2 December. I've never had a mother and a daughter on the
11:40:01 3 same jury panel. And I heard your daughter, Ms. Gibbons,
11:40:09 4 talk about how much she respects you, as she should, and
11:40:12 5 how it would be hard for her to go a different direction if
11:40:15 6 you and she were on the same jury and you felt one way and
11:40:19 7 she might otherwise not feel that way but she'd be
11:40:23 8 influenced by the position you took.

11:40:24 9 I guess I need to get -- hear from you on the
11:40:26 10 reverse of that. If you and she were on the jury, would
11:40:29 11 whatever position she took influence you or would you be
11:40:33 12 able to --

11:40:35 13 JUROR HALEY: I have my own --

11:40:36 14 THE COURT: -- make your own independent decision?

11:40:38 15 JUROR HALEY: I have a mind of my own.

11:40:38 16 THE COURT: I'm not suggesting --

11:40:40 17 JUROR HALEY: I love my daughter, and she's really
11:40:44 18 intuitive on people, you know. She reads them probably
11:40:47 19 better than I do. But I still -- I have a mind of my own.

11:40:52 20 THE COURT: And there's no guarantee that you and
11:40:54 21 she will both end up on this jury.

11:40:56 22 JUROR HALEY: Yeah, I know.

11:40:57 23 THE COURT: But if you did, you could handle
11:41:01 24 yourself just like the other seven people were seven
11:41:05 25 strangers and her being your daughter wouldn't change how

11:41:08 1 you would react to her or be influenced by her; is that
11:41:10 2 right?

11:41:10 3 JUROR HALEY: No, I couldn't be influenced to
11:41:13 4 change what I think.

11:41:13 5 THE COURT: Okay. Ms. Smith, do you have any
11:41:15 6 questions for Ms. Haley?

11:41:16 7 MS. SMITH: No, Your Honor.

11:41:17 8 THE COURT: Okay. Ms. Haley, I'm going to let you
11:41:21 9 return to the jury -- to the courtroom. Just don't discuss
11:41:23 10 anything we talked about in here.

11:41:25 11 JUROR HALEY: Okay.

11:41:25 12 THE COURT: Thank you very much.

11:41:28 13 (Juror excused to return to the courtroom.)

11:41:29 14 THE COURT: All right. Ms. Haley is not excused.
11:41:32 15 We've excused Mr. Parker, No. 5, by agreement.

11:41:38 16 That brings us to the other half of the equation,
11:41:42 17 No. 16, Ms. Gibbons.

11:41:44 18 Could we get Ms. Gibbons in, please?

11:42:01 19 (Juror brought into jury room.)

11:42:01 20 THE COURT: Come in, Ms. Gibbons. Do you mind
11:43:46 21 having a seat right there, please? Thank you.

11:43:50 22 JUROR GIBBONS: Do I need to take my mask down?

11:43:53 23 THE COURT: Whatever you'd prefer --

11:43:55 24 JUROR GIBBONS: Okay.

11:43:56 25 THE COURT: -- just so I can hear you.

11:43:57 1 I heard your answers to the questions about if you
11:44:01 2 and your mother both ended up on the jury, and the way I
11:44:07 3 understood your answers were that if you both were on the
11:44:09 4 jury, whatever her position would be would influence you,
11:44:15 5 and it'd be hard for you to make the same kind of
11:44:17 6 independent decision as you would if she was not on the
11:44:20 7 jury.

11:44:20 8 Is that -- is that close, or if it's not, correct
11:44:23 9 it for me?

11:44:24 10 JUROR GIBBONS: It is -- it close. Okay. A lot
11:44:26 11 of what my mom thinks is the same thing that I think.
11:44:30 12 So -- but I don't know if -- because if I firmly believe
11:44:35 13 that -- that she's wrong, then I'm going to stick with my
11:44:38 14 opinion.

11:44:39 15 THE COURT: Okay.

11:44:41 16 JUROR GIBBONS: Because I know she's smart, and I
11:44:42 17 love my other mother to death, but if I just firmly believe
11:44:48 18 that she's not right about it, then I don't think I could
11:44:50 19 go side with her.

11:44:52 20 THE COURT: And if both of y'all end up on this
11:44:54 21 jury, it's my hope that the other six people are going to
11:44:59 22 be smart and nice people, too, that have good thoughts, as
11:45:01 23 well.

11:45:01 24 JUROR GIBBONS: Yes, sir.

11:45:02 25 THE COURT: But you're telling me if you feel like

11:45:05 1 she's wrong, you're not going to --

11:45:06 2 JUROR GIBBONS: I would not side with her.

11:45:08 3 THE COURT: -- cave in for lack of a better
11:45:08 4 expression?

11:45:08 5 JUROR GIBBONS: No, sir.

11:45:10 6 THE COURT: Okay. And let me ask you this, I also
11:45:13 7 have in my notes that you just don't like Apple products.

11:45:16 8 JUROR GIBBONS: I don't.

11:45:17 9 THE COURT: And that's very honest.

11:45:18 10 JUROR GIBBONS: But I would not -- I wouldn't hold
11:45:20 11 it against them because there -- just because I don't like
11:45:22 12 their products. A lot of people do. Just because I don't
11:45:23 13 like it doesn't mean it's not --

11:45:23 14 THE COURT: And you understand -- you understand
11:45:25 15 that the products in this case that are going to be -- the
11:45:27 16 products and the processes that are going to be accused of
11:45:33 17 infringing are going to be Apple products and processes.

11:45:35 18 JUROR GIBBONS: Yes, sir.

11:45:36 19 THE COURT: So knowing that you really don't like
11:45:38 20 their products, do you think you could treat them just the
11:45:41 21 same as if it were Samsung or some other company out there
11:45:48 22 besides Apple?

11:45:49 23 JUROR GIBBONS: I will always have my opinion
11:45:52 24 about the product, but I would like to think that I would
11:45:54 25 not hold it -- I don't -- is it going -- I mean, okay, is

11:46:00 1 it going to be about the products, or is this just about
11:46:04 2 patents of -- because if they say, okay, well, do you like
11:46:08 3 the -- what's your opinion of a galaxy -- whatever the new
11:46:15 4 Galaxy is, and the Apple, whatever the new Apple phone is,
11:46:18 5 I would probably side with the Galaxy because I just don't
11:46:22 6 like --

11:46:23 7 THE COURT: And I don't think you're going to be
11:46:24 8 asked to do that.

11:46:25 9 I think what you're going to be asked to do is
11:46:27 10 look at the accused Apple products and then look at this
11:46:31 11 patent that's owned by PMC --

11:46:34 12 JUROR GIBBONS: Yes, sir.

11:46:34 13 THE COURT: -- and say -- and answer the question,
11:46:39 14 does what these products do meet all of the requirements
11:46:42 15 and line up perfectly and fit with what the claims in the
11:46:48 16 PMC patent -- the PMC patent say that PMC owns and has the
11:46:53 17 right to control. And they're either going to line up, or
11:46:56 18 they're not going to line up.

11:46:57 19 JUROR GIBBONS: Yes, sir.

11:46:58 20 THE COURT: So you're going to be looking at the
11:47:00 21 language in the patent, comparing it to the products that
11:47:03 22 Apple owns, but you're not going to be looking at Samsung
11:47:07 23 phones or HTC phones or ZTE phones or Ericsson phones or
11:47:16 24 anybody -- anybody else's phones.

11:47:18 25 JUROR GIBBONS: I would like to -- yeah, I think I

11:47:20 1 can -- I could give them a fair trial.

11:47:24 2 THE COURT: Okay.

11:47:24 3 JUROR GIBBONS: But I will be honest, I do have
11:47:27 4 very bad dyslexia, so, like, I don't understand stuff. If
11:47:32 5 I read it, I would have to, like, read it over several
11:47:35 6 times before I understood it. And most of the time, I
11:47:39 7 don't even understand it then. I have to have it read to
11:47:42 8 me in order for me to understand.

11:47:44 9 THE COURT: Okay. Well, if you're on this jury,
11:47:49 10 you're going to be given a notebook, and in that notebook,
11:47:52 11 you're going to have a complete copy of this patent, and
11:47:55 12 you're going to have a pad that you can make notes on
11:47:58 13 throughout the trial as you listen to the evidence. You're
11:48:01 14 also going to have some other material in there.

11:48:03 15 And then when the trial -- when the evidence is
11:48:07 16 all in and I send the jury back here to deliberate, you're
11:48:12 17 going to have a written verdict with questions in it that
11:48:15 18 everybody will be able to read those questions, and then
11:48:17 19 the group is going to have to answer those questions.

11:48:20 20 You're also going to be given instructions by me
11:48:24 21 on how you do your job and the rules that you apply. And
11:48:29 22 those instructions are going to be given by me to the jury
11:48:32 23 orally in the courtroom, and then an exact written copy of
11:48:37 24 those instructions are going to be sent back to the jury
11:48:40 25 room so that everybody on the jury has their own copy of

11:48:43 1 those instructions and can look at them as much as they
11:48:45 2 need to.

11:48:46 3 Now, from where you sit now, if all that were to
11:48:50 4 happen, do you think you can be a part of a jury and make
11:48:53 5 an informed decision if you sat through this trial on the
11:48:56 6 jury, or do you think there's something that you know about
11:49:00 7 yourself that would keep you from being able to do that?

11:49:03 8 JUROR GIBBONS: If I can understand everything,
11:49:06 9 reading it, yeah, I think I would be able to give them a
11:49:10 10 fair trial.

11:49:11 11 THE COURT: Okay. Ms. Smith, do you have any
11:49:16 12 questions for Ms. Gibbons?

11:49:18 13 MS. SMITH: Ms. Gibbons, you've not heard of PMC
11:49:24 14 before you came into the courtroom?

11:49:25 15 JUROR GIBBONS: No.

11:49:26 16 MS. SMITH: So they're start out with a blank
11:49:29 17 slate, right?

11:49:32 18 JUROR GIBBONS: (Nods head affirmatively.)

11:49:34 19 THE COURT: And on the Apple side, you said
11:49:34 20 something when you were listening with Judge Gilstrap, you
11:49:36 21 said you'd always hold that view, those negative views of
11:49:39 22 their products, right?

11:49:40 23 JUROR GIBBONS: Just that I don't like the way
11:49:42 24 they operate.

11:49:45 25 MS. SMITH: Okay, and this case, I'll tell you, is

11:49:46 1 about the products, iPads, iPods, iPhones, all five days.

11:49:51 2 And we're going to say that Apple's innovative and that

11:49:55 3 Apple does things better than others, and I sense that when

11:49:58 4 I'm saying these things in court, you might have a

11:50:02 5 different opinion and you're -- you do, don't you?

11:50:06 6 JUROR GIBBONS: (Nods head affirmatively.)

11:50:07 7 THE COURT: And there's nothing I can do -- I

11:50:09 8 mean, you've had -- you've had not experience with one

11:50:11 9 Apple product but you've had a bad experience with multiple

11:50:15 10 products.

11:50:15 11 JUROR GIBBONS: My kids -- my son likes it. My

11:50:18 12 daughter wants one, but --

11:50:20 13 MS. SMITH: But you won't get her one, will you?

11:50:23 14 JUROR GIBBONS: Oh well, they have to buy their

11:50:24 15 own. If they -- we provide them with a phone, but if you

11:50:26 16 want a better phone, then you provide your own.

11:50:29 17 MS. SMITH: That's fair. That's fair. But what

11:50:30 18 my point being, you know, like you said, that you start out

11:50:33 19 with those views of the products, and no one can tell you

11:50:36 20 to forget about those views. So Apple, you know, starts

11:50:39 21 out in a little different place than PMC, who starts at the

11:50:43 22 start line, because you've never heard of them before; is

11:50:46 23 that right?

11:50:46 24 JUROR GIBBONS: I would -- I just don't like the

11:50:48 25 way they operate in how you -- it's not the actual, I

11:50:52 1 guess, product -- well, it is the product because that's
11:50:54 2 the -- how the product operates, but...

11:50:58 3 MS. SMITH: Yeah, okay, thank you, ma'am. I
11:51:00 4 appreciate that.

11:51:01 5 THE COURT: Ms. DeRieux, do you have any questions
11:51:02 6 for Ms. Gibbons?

11:51:03 7 MS. DERIEUX: If the judge gave you instructions
11:51:07 8 to limit your decision to what you heard in the courtroom,
11:51:12 9 would you be able to follow those instructions and not
11:51:18 10 bring in personal past thoughts or experiences, but limit
11:51:24 11 your focus during this trial to what you actually hear from
11:51:28 12 the witnesses and from the Court in terms of the decision
11:51:32 13 that you come to when you finally go to the jury room.

11:51:36 14 JUROR GIBBONS: Yes, ma'am, I think I can.

11:51:38 15 MS. DERIEUX: Thank you. That's all, Your Honor.

11:51:40 16 THE COURT: All right. Ms. Gibbons, I'm going to
11:51:41 17 let you return to your place out in the courtroom. Just
11:51:45 18 don't discuss anything we talked about in here.

11:51:47 19 JUROR GIBBONS: Yes, sir.

11:51:48 20 THE COURT: Thank you very much.

11:51:49 21 JUROR GIBBONS: Thank you.

11:51:52 22 (Juror excused to return to the courtroom.)

11:51:52 23 THE COURT: All right. Let's get Mr. Groce,
11:52:05 24 No. 18, and bring him in, please.

11:52:08 25 I'm going to excuse Ms. Gibbons.

11:52:13 1 MS. SMITH: Thank you, Your Honor.

11:52:13 2 THE COURT: Well, it's not for anybody's thanks.

11:52:17 3 It's for two reasons. I have some concerns given the
11:52:22 4 strength of her convictions that are negative to Apple that
11:52:26 5 she really could leave those experiences outside. And
11:52:32 6 she's indicated some real concern about being able to
11:52:36 7 follow the evidence given her dyslexia, and this is going
11:52:40 8 to be by any standard a complicated trial. And we have
11:52:45 9 plenty of people on the panel to get a jury from.

11:52:48 10 So she is -- she is in a position where I think
11:52:51 11 the safe thing to do is to excuse her, and she is excused.

11:53:00 12 (Juror brought into jury room.)

11:53:01 13 THE COURT: Mr. Groce would you have a seat,
11:53:07 14 please, sir.

11:53:07 15 JUROR GROCE: Yes, sir.

11:53:08 16 THE COURT: Mr. Groce, my notes from what's
11:53:10 17 happened so far today, I have written down that you don't
11:53:12 18 like Apple products. I think somebody tried to get you to
11:53:15 19 say you shouldn't be on this jury, and you never did say, I
11:53:19 20 shouldn't be on this jury.

11:53:20 21 But you did say clearly, you have some level of
11:53:24 22 dislike for Apple products. And this trial is going to be
11:53:27 23 about certain Apple products.

11:53:30 24 JUROR GROCE: Right.

11:53:30 25 THE COURT: And the question I have for you, sir,

11:53:33 1 is whatever those experiences were --

11:53:35 2 JUROR GROCE: Uh-huh.

11:53:35 3 THE COURT: -- in the past before today, can you
11:53:40 4 completely set those aside and leave them outside the
11:53:44 5 courtroom and make any decisions you're going to make,
11:53:47 6 they're going to be very important decisions --

11:53:49 7 JUROR GROCE: Uh-huh.

11:53:50 8 THE COURT: -- without being influenced by those
11:53:52 9 at all and just decide whatever you're asked to decide
11:53:56 10 solely and only on what you hear and what you're shown in
11:54:00 11 the courtroom?

11:54:00 12 Or are you human enough, like some of us, to say,
11:54:04 13 I would try real hard, but I can't promise you I'd able to
11:54:08 14 not be influenced in some way? I don't know how strong
11:54:11 15 those experiences have been with you.

11:54:14 16 JUROR GROCE: Right.

11:54:14 17 THE COURT: There are some that are not terribly
11:54:17 18 strong experiences, a lot easier to leave outside, and some
11:54:20 19 that are very strong experiences that are very hard to
11:54:23 20 leave outside. So I just have to ask you in all candor to
11:54:27 21 explain to me where you fall on that.

11:54:29 22 JUROR GROCE: Right. Well, my experience is,
11:54:31 23 again, I have a very -- I'm not very good in technology,
11:54:35 24 and I don't have a lot of patience with it. I've not had
11:54:42 25 good experience with Apple. I like Android a lot better.

11:54:44 1 But that's beside the point. It just seems simpler to
11:54:52 2 operate and use and all of that. You know, I'm human so I
11:54:54 3 just have to make the best decision that I could, you know.

11:54:56 4 THE COURT: Well, do you think, in all honesty,
11:54:59 5 that if you were in that position and making a decision and
11:55:03 6 that decision involved Apple products, could you be as
11:55:11 7 neutral about that and not influenced by your prior
11:55:13 8 experiences as if this was trying to choose between a Ford
11:55:16 9 and a Chevy or something, you know, in a different area
11:55:20 10 altogether where you didn't have -- maybe you like Fords
11:55:23 11 better than Chevys, I don't know.

11:55:26 12 But in an area where you didn't have any prior bad
11:55:28 13 experiences or pre-existing feelings about the products.
11:55:32 14 If it was two products you'd not really ever seen or heard
11:55:36 15 before, could you treat Apple in this case like that? Or
11:55:39 16 are those experiences such that you just can't tell me you
11:55:44 17 could be sure that they wouldn't impact your decision?
11:55:47 18 That's really the bottom line.

11:55:48 19 JUROR GROCE: Yeah. Well, like I say, I would
11:55:51 20 try. But, I mean, I just -- I really couldn't be sure, I
11:55:54 21 guess.

11:55:54 22 THE COURT: Okay. Well, all I can ask for is your
11:55:58 23 most candid and honest answer.

11:56:00 24 JUROR GROCE: Right.

11:56:00 25 THE COURT: And I appreciate that.

11:56:01 1 JUROR GROCE: Yes, sir.

11:56:02 2 THE COURT: Ms. Smith, do you have any questions
11:56:03 3 for Mr. Groce?

11:56:05 4 MS. SMITH: No, Your Honor.

11:56:06 5 THE COURT: Ms. DeRieux?

11:56:08 6 MS. DERIEUX: Nothing. Thank you.

11:56:09 7 THE COURT: All right. Sir. All right. If
11:56:13 8 you'll go back and take your seat in the courtroom. Just
11:56:17 9 don't discuss what we've talked about in here.

11:56:22 10 JUROR GROCE: Yes, sir.

11:56:23 11 THE COURT: Thank you very much.

11:56:24 12 (Juror excused to return to the courtroom.)

11:56:25 13 THE COURT: I'm going to excuse Mr. Groce.

11:56:28 14 MS. SMITH: Thank you, Your Honor.

11:56:28 15 THE COURT: I appreciate his candor in saying he
11:56:35 16 would try. But he could never tell me with any certainty
11:56:38 17 that he could be sure his negative prior experiences
11:56:41 18 wouldn't influence his service.

11:56:42 19 All right. I have struck by agreement No. 5,
11:56:47 20 Mr. Parker. And I've struck No. 16 and 18. We're going to
11:56:53 21 seat eight jurors. Each side is going to get four strikes.
11:56:57 22 That means 16 plus three -- is it 21 we strike through?

11:57:04 23 MS. DERIEUX: I said 19.

11:57:06 24 MS. SMITH: I thought 19.

11:57:08 25 THE COURT: 19. I'm not sure that's right. Let's

11:57:25 1 talk about it and make sure so we all leave here of one
11:57:29 2 mind.

11:57:29 3 Okay. No. 5 is out. No. 16 and No. 18 are out.

11:57:38 4 So that's three strikes on the first two pages. That
11:57:44 5 leaves us 15 active people. Then we need 19, 20, and 21 to
11:57:50 6 get back to -- no. No, we don't need three more. We just
11:57:57 7 need one more to get to 16. So it is 19. Okay.

11:58:03 8 All right. Then strike through No. 19.

11:58:09 9 How much time do you all need to strike your list?

11:58:14 10 MS. SMITH: May we have 15 minutes?

11:58:17 11 THE COURT: I'll give you --

11:58:18 12 MS. DERIEUX: May --

11:58:18 13 THE COURT: Yes, ma'am.

11:58:19 14 MS. DERIEUX: May we make just -- we need to go
11:58:20 15 off topic for just a minute.

11:58:22 16 MR. KLINE: There is no challenge to the validity
11:58:25 17 of the patent in this case, Your Honor.

11:58:27 18 THE COURT: Okay.

11:58:27 19 MR. KLINE: So there's no issue upon which there's
11:58:30 20 a clear and convincing burden of proof.

11:58:32 21 THE COURT: Okay.

11:58:33 22 MR. KLINE: So if it's the appropriate time, if we
11:58:35 23 could just maybe let the jury that gets sat know that. I
11:58:40 24 don't know, maybe we don't think that it will linger but --

11:58:42 25 THE COURT: That's what happens when the

11:58:44 1 magistrate judge does the pre-trial.

11:58:47 2 MR. KLINE: I certainly wasn't going to stand up,
11:58:50 3 Your Honor. I thought we could straighten it out.

11:58:53 4 THE COURT: I'll address that.

11:58:54 5 MR. KLINE: Thank you very much.

11:58:56 6 THE COURT: Okay.

11:58:56 7 MS. SMITH: Your Honor, may one team use this room
11:58:59 8 and another team use the attorney conference room?

11:59:02 9 THE COURT: Attorney client's room, that's fine.

11:59:03 10 And if you'll see Ms. Brunson when you have your
11:59:06 11 list, and turn them in to her, we'll get our eight jurors
11:59:08 12 identified.

11:59:08 13 MS. SMITH: Thank you.

11:59:09 14 THE COURT: I'll give you about 15 minutes.

11:59:12 15 MS. DERIEUX: Thank you, Your Honor.

11:59:12 16 MS. SMITH: Thank you.

11:59:12 17 THE COURT: Let's do this, let's go back in the
11:59:14 18 courtroom, and I'll explain to the panel what's going on,
11:59:18 19 and then you can break.

11:59:18 20 (Recess.)

11:59:18 21 (Proceedings in the courtroom, venire panel.

11:59:28 22 Present.)

11:59:28 23 THE COURT: Thank you for your patience, ladies
12:01:12 24 and gentlemen.

12:01:12 25 I'm going to afford the lawyers on both sides of

12:01:19 1 the case approximately 15 minutes to generate some
12:01:23 2 information and turn it into the courtroom deputy that
12:01:26 3 we'll need as a part of selecting the jury.

12:01:29 4 While they're out of the courtroom, I'm going to
12:01:31 5 step off of the bench. You all should stay where you're
12:01:34 6 seated. Again, the Court Security Officers will check with
12:01:37 7 you about restroom breaks while I'm out of the courtroom.

12:01:40 8 It's just a minute or two after 12:00 noon. I
12:01:46 9 always get nervous about people not being able to go to
12:01:50 10 lunch at 12:00. I know some people have physical
12:01:54 11 conditions that they need to have something in their
12:01:57 12 system.

12:01:58 13 So while I'm out of the courtroom for the next 15
12:02:00 14 or 20 minutes, the clerk's office will be in here with
12:02:04 15 bottled water. And I think there are peanut butter
12:02:07 16 crackers, there's something to munch on, and those will
12:02:11 17 be -- those will be available if you want those. If you
12:02:12 18 do, just signal that you do, and they'll bring them to you.

12:02:16 19 Not many of you out there know me very well, but I
12:02:18 20 can promise you, the fact that I would let somebody bring
12:02:22 21 crackers and water into my courtroom tells you that this is
12:02:24 22 taking longer than I would like it to take. But it's just
12:02:27 23 part of what we have to do to be as safe as we can in this
12:02:31 24 current environment.

12:02:31 25 So while I'm off the bench, the clerk's office

12:02:36 1 will be in here with those items, and if you like some, let
12:02:40 2 them know. If you need a trip to the restroom, let one of
12:02:42 3 the Court Security Officers or the Court's personnel know
12:02:45 4 and they'll try to work with you.

12:02:47 5 Again, if you want to talk to somebody next to
12:02:49 6 you, that's perfectly fine. Just don't discuss anything
12:02:52 7 that's been talked about during the trial.

12:02:54 8 And also, while I have you here, I want to make
12:02:58 9 one correction, and this is my fault.

12:03:00 10 I said in some of my earlier instructions to you
12:03:05 11 that the Defendants say the patent in this case is invalid.
12:03:10 12 That's not the case. They're not making that claim.

12:03:13 13 And if the Defendant were claiming the patent was
12:03:17 14 invalid, then the evidence of that would have to be judged
12:03:23 15 by that clear and convincing evidence standard instead of
12:03:30 16 the preponderance of the evidence standard.

12:03:31 17 So because the Defendant is not asserting the
12:03:33 18 invalidity of the Plaintiff's patent, then there's not
12:03:37 19 going to be any application of the clear and convincing
12:03:39 20 evidence standard.

12:03:40 21 And, quite honestly, I missed that, and I should
12:03:45 22 have been more careful about those instructions. So the
12:03:47 23 only burden of proof the jury selected in this case is
12:03:50 24 going to apply is the preponderance of the evidence
12:03:52 25 standard.

12:03:53 1 So I want to get that on the record as soon as I
12:03:56 2 realized my mistake and make sure you are all clear on
12:04:00 3 that.

12:04:01 4 So with that, ladies and gentlemen, I'm going to
12:04:02 5 afford the lawyers a chance to strike their list and get me
12:04:06 6 that information as we've discussed outside the jury's
12:04:09 7 presence for the next 15 minutes or so, and in the
12:04:13 8 meantime, the Court will stand in recess.

12:04:15 9 COURT SECURITY OFFICER: All rise.

12:04:20 10 (Venire panel out.)

12:33:06 11 (Recess.)

12:33:07 12 COURT SECURITY OFFICER: All rise.

12:33:08 13 THE COURT: Be seated, please.

12:33:09 14 All right. Ladies and gentlemen, if you will
12:33:26 15 listen carefully as your name is called and come forward
12:33:29 16 and take your seat -- or your position, rather, in the jury
12:33:34 17 box. I'm going to ask all eight members of the jury to be
12:33:37 18 remain standing until all eight of you are in the jury box.
12:33:43 19 And I'm going to ask the first person called, if they would
12:33:45 20 go down the front row of the jury box and stand in front of
12:33:50 21 the last chair.

12:33:50 22 And then the second person will go down the
12:33:52 23 jury -- the front row of the jury box and stand in front of
12:33:57 24 the third chair from the end, leave an empty seat between.
12:34:02 25 And we'll put the first four jurors on the front row in

12:34:02 1 that fashion.

12:34:05 2 And then, Juror No. 5, when your name is called,
12:34:07 3 if you'll go to the back row, go all the way to the end and
12:34:11 4 stand in front of the last chair, and then the next juror,
12:34:15 5 No. 6, will leave an empty chair between you and stand in
12:34:19 6 front of the third chair from the end and so forth and so
12:34:22 7 on.

12:34:22 8 That will position everybody on the jury such that
12:34:25 9 no two people are seated directly next to each other and
12:34:30 10 leave an empty chair between all eight of you. And if you
12:34:33 11 would maintain that position in the jury box throughout the
12:34:37 12 trial during breaks and recesses when you come in, if
12:34:42 13 you'll go in that same order and be in that same position,
12:34:44 14 the Court will appreciate it.

12:34:46 15 So with that, Ms. Brunson, if you'll call the
12:34:51 16 members, the names of the eight members of our jury,
12:34:53 17 please.

12:34:53 18 COURTROOM DEPUTY: James Cox, Arthur Overstreet,
12:35:00 19 Jerry Quarles, Angelique Smith, Jeanette Turner, Flemon
12:35:16 20 Rand, Mr. Rand, yes, sir. Janie Washington and Carolyn
12:35:49 21 Moore.

12:35:52 22 THE COURT: Thank you, ladies and gentlemen. If
12:35:53 23 there's something in your seat, please pick it up. But
12:35:56 24 otherwise, please have a seat.

12:36:01 25 Those of you on the panel that were not selected

12:36:04 1 to serve on this jury, I'm about to excuse you, but I want
12:36:06 2 to excuse you with a few final words before you leave us.

12:36:10 3 First of all, I want to thank you on behalf of the
12:36:15 4 Court, both the parties, all the lawyers. Every one of us
12:36:18 5 on this side of the bar realizes that our system of justice
12:36:23 6 would not work and would come to a screeching halt unless
12:36:28 7 ordinary citizens like yourselves responded as you have and
12:36:32 8 when you're summonsed to appear for jury service that you
12:36:36 9 come, you present yourself.

12:36:37 10 I am very much aware that every one of you out
12:36:40 11 there who were not selected had other places to be this
12:36:44 12 morning, you had other things to do that were important in
12:36:47 13 your lives, and you set those things aside, and you
12:36:50 14 sacrificed in a very real way to be here and present
12:36:54 15 yourself for jury duty.

12:36:55 16 And I want you to know that all of us appreciate
12:36:58 17 that. We understand that you are an integral and
12:37:03 18 indispensable part of the process. And if you were not
12:37:07 19 where you are, if you had not appeared and presented
12:37:10 20 yourself and made the sacrifices necessary to do that, the
12:37:13 21 Court would not be able to go forward with this trial --
12:37:16 22 this important trial between these parties and reach an
12:37:19 23 ultimate resolution.

12:37:21 24 I hope that the next time you're served with a
12:37:26 25 summons, and I don't know when that will be, and I hope the

12:37:30 1 next time you are summonsed to come back to this court
12:37:34 2 since you all live in the Marshall Division of the Eastern
12:37:36 3 District of Texas that you'll come with the same positive
12:37:38 4 attitude and productive and cooperative spirit that I've
12:37:41 5 seen from all of you this morning.

12:37:43 6 Ladies and gentlemen, thank you so much. You have
12:37:45 7 rendered very real and important public service. And on
12:37:49 8 behalf of all of us, we thank you genuinely and sincerely.

12:37:53 9 As you leave the courtroom, if you will see the
12:37:55 10 clerk's office as you exit to the right, going out the
12:38:00 11 double doors in the back of the courtroom. They're going
12:38:03 12 to want to retrieve these very expensive plastic numbers
12:38:07 13 you've been wearing on your clothing. So don't take those
12:38:10 14 home as a souvenir.

12:38:12 15 Also if you need something in writing to verify
12:38:15 16 for an employer why you didn't show up for work today, they
12:38:19 17 will provide you with any and all documentation that you
12:38:22 18 need. If you have any questions about your participation
12:38:25 19 as members of this venire panel, please see Ms. Clendening
12:38:25 20 and her staff in the clerk's office, and I promise you,
12:38:28 21 they will bend over backwards to help you and accommodate
12:38:31 22 you.

12:38:32 23 Again, ladies and gentlemen, those of you not
12:38:34 24 chosen for service on this jury, you leave with the thanks
12:38:39 25 and sincere appreciation of the Court and everyone involved

12:38:42 1 in this trial. Those of you not selected are excused at
12:38:43 2 this time.

12:38:46 3 COURT SECURITY OFFICER: All rise.

12:39:45 4 (Venire panel out.)

12:39:45 5 THE COURT: All right. I'll ask everybody except
12:39:47 6 the jury and the courtroom deputy to have a seat. And I'll
12:39:50 7 ask our courtroom deputy to administer the oath to the
12:39:54 8 members of the jury at this time.

12:39:55 9 (Jurors sworn.)

12:40:11 10 THE COURT: Thank you, ladies and gentlemen.
12:40:12 11 Please have a seat.

12:40:12 12 We're going to recess for lunch in just a minute,
12:40:15 13 but before we do, I have some instructions I need to go
12:40:19 14 over with you.

12:40:20 15 First of all, while you're on lunch break today,
12:40:25 16 please make sure that you communicate to Ms. Clendening's
12:40:29 17 office a good working cell phone number for you. It is
12:40:33 18 possible something could arise over the course of the trial
12:40:35 19 where we would need to get in touch with you while you were
12:40:38 20 at home or before you arrived, and I want to make sure she
12:40:41 21 has a good working cell phone number for you. So just as a
12:40:44 22 precaution, if you'll make sure that's communicated to the
12:40:47 23 clerk's office while you're on a lunch break.

12:40:49 24 Also, you have either in your chairs or next to
12:40:54 25 your chairs packets with the clear mask and the clear face

12:40:59 1 shields in them. If you'll take those with you to the jury
12:41:01 2 room, and over the lunch hour figure out which of those --
12:41:04 3 or if not both, you'd like to use to replace these blocking
12:41:10 4 solid material masks that keep us all from seeing a
12:41:13 5 majority of your faces.

12:41:15 6 I will tell you this from personal experience,
12:41:17 7 there's a film over the plastic part, so unless you want
12:41:21 8 everything to look wrinkled, if you look through the film,
12:41:24 9 be sure to take the film off. Because I forgot to do it
12:41:28 10 the first time I put one of those on, it was not a clear
12:41:31 11 view.

12:41:32 12 If you'll take the film off, once you get into
12:41:36 13 those packets, and you can do that over the lunch hour,
12:41:36 14 you'll see very clearly through either or both of those.
12:41:36 15 Of course, with the mask you won't be looking through them,
12:41:40 16 but you will with the face shield.

12:41:42 17 Also, ladies and gentlemen, and this is -- all my
12:41:46 18 instructions are important, but none of them are more
12:41:49 19 important than this one. Do not discuss this case with
12:41:51 20 anyone. And when I say "do not discuss it," I mean, don't
12:41:56 21 communicate about this case with anyone. This goes back to
12:42:00 22 one of the fundamental premises of the jury trial system,
12:42:03 23 and that is, when all the evidence has been presented in
12:42:06 24 this case, you, the jury, are going to be asked to answer
12:42:09 25 certain questions that are going to be given to you in

12:42:13 1 what's called the verdict form.

12:42:14 2 And when you answer those questions, it must be
12:42:18 3 the case that the sole and only information you have to
12:42:22 4 draw upon in answering those questions is the information
12:42:26 5 that's come to you as a part of this trial in this
12:42:31 6 courtroom through the sworn testimony of the witnesses,
12:42:34 7 subject to cross-examination, and through the exhibits that
12:42:37 8 the Court has admitted into evidence. Those must be the
12:42:42 9 only sources of information that you have to rely upon.

12:42:46 10 Therefore, it is essential that you not
12:42:49 11 communicate with anyone about the case, because if you do,
12:42:54 12 then it's almost unavoidable that other information will be
12:42:58 13 a part of what you have before you, and that, quite
12:43:01 14 honestly, jeopardizes and could put at serious risk the
12:43:07 15 entire process.

12:43:07 16 And there's been a tremendous amount of work and
12:43:11 17 effort and resources that have gone into this trial so far.
12:43:14 18 The last thing I want to do is to have to order a mistrial
12:43:17 19 and start over with a new jury. And so, please, do not
12:43:20 20 discuss the case with anyone.

12:43:22 21 And I can tell you, ladies and gentlemen, unless
12:43:24 22 you live alone, when you get home tonight, wherever that
12:43:28 23 is, whoever is there, the first question out of their mouth
12:43:31 24 is going to be, well, tell me what happened in federal
12:43:34 25 court in Marshall today. When you get that question, don't

12:43:38 1 even try to answer it.

12:43:39 2 Just smile and say, that very stern federal judge
12:43:43 3 told me not to talk about this case, and I can't do that.
12:43:47 4 After this trial is over, after I'm no longer a juror and
12:43:52 5 I've been released by the judge, then I can talk to you.
12:43:57 6 But until that happens, I'm under strict orders from the
12:44:00 7 Court not to discuss the case at all. So let that be your
12:44:04 8 answer. Don't even try to answer that inevitable question
12:44:07 9 about tell me what happened in federal court today.

12:44:09 10 Also, ladies and gentlemen, when I say "don't
12:44:11 11 communicate about the case," I also mean not to communicate
12:44:15 12 among the eight of yourselves. You have not heard any
12:44:18 13 evidence in this case.

12:44:20 14 And until you have heard all the evidence and
12:44:23 15 until I instruct you to retire to the jury room after
12:44:26 16 you've received my final instructions on the law and you've
12:44:30 17 heard closing arguments from the attorneys, then and only
12:44:34 18 then when I instruct you to retire to the jury room and to
12:44:36 19 deliberate on those questions in the verdict form, then may
12:44:41 20 you discuss the case among yourselves. But until then, you
12:44:44 21 must not discuss the case among the eight of yourselves.

12:44:47 22 It's almost in my mind, ladies and gentlemen, like
12:44:51 23 a light switch. It's off until you've heard all of the
12:44:54 24 evidence, you've received my instructions on the law, and
12:44:58 25 counsel have presented their closing arguments. And then

12:45:01 1 at the moment I tell you, ladies and gentlemen, you may
12:45:04 2 retire to the jury room and deliberate on your verdict, the
12:45:07 3 light switch gets switched on.

12:45:09 4 And at that moment, it is no longer that you can't
12:45:13 5 discuss the case among yourselves. At that moment, it
12:45:16 6 becomes you must discuss the case among the eight of you in
12:45:20 7 an effort to reach a unanimous decision about each of the
12:45:23 8 questions in that verdict form.

12:45:25 9 So until that light switch is turned on, when all
12:45:29 10 the evidence is in, when my final instructions have been
12:45:34 11 given to you, when counsel have presented their closing
12:45:37 12 arguments, until that moment when I direct you to retire
12:45:40 13 and consider and deliberate on your verdict, you must not
12:45:44 14 discuss the case among the eight of yourselves in any way.

12:45:47 15 And when I say also "don't communicate about the
12:45:49 16 case," that's much more than oral communication. Don't
12:45:54 17 email your cousin in West Virginia or your aunt in Arizona,
12:46:01 18 don't text message anybody, don't go on social media, if
12:46:05 19 you are a social media or social platform user, whether
12:46:10 20 it's Facebook or Instagram or Twitter or any of the others
12:46:14 21 out there, don't post or put up anything on any social
12:46:17 22 media site about this case.

12:46:20 23 And also, don't do any research about this case.
12:46:23 24 That's outside information, too. Don't go online and look
12:46:28 25 up PMC, don't look up Apple, don't look up any of the

12:46:32 1 devices and products you're going to hear about in this
12:46:36 2 case, don't do any research about these lawyers.

12:46:38 3 In short, don't do any research at all, either
12:46:41 4 online or if you're old school and have a set of
12:46:45 5 encyclopedias, don't pull one off the shelf and do any
12:46:49 6 research. No research whatsoever.

12:46:50 7 Again, it all circles back and it all comes back
12:46:54 8 to that fundamental concept that the sole and only
12:46:58 9 information that you should have to draw upon at the end of
12:47:02 10 this trial when you begin to deliberate on your verdict and
12:47:05 11 answer those questions must be limited to what was
12:47:11 12 presented in this courtroom through the sworn testimony of
12:47:14 13 the witnesses and through the exhibits the Court has
12:47:17 14 reviewed, considered, and admitted into evidence. That's
12:47:20 15 it.

12:47:20 16 And if there is any other outside information
12:47:23 17 whatsoever, it jeopardizes the entire process. So please
12:47:29 18 keep that in mind as we go throughout the trial. As a
12:47:32 19 matter of fact, ladies and gentlemen, I have a habit that
12:47:36 20 every time you get up out of those chairs, whether it's to
12:47:38 21 go to lunch, whether it's to take a recess, whether it's to
12:47:41 22 go home for the evening, you're probably going to hear me
12:47:44 23 say, don't discuss the case with anyone.

12:47:47 24 You're going to be tired of hearing me remind you
12:47:49 25 about it until this trial is over. But it's because it's

12:47:53 1 that critical and vital that I'm probably going to remind
12:47:58 2 you over and over again about it.

12:47:59 3 So, please, keep that instruction in the forefront
12:48:02 4 of your minds.

12:48:03 5 Also, ladies and gentlemen, I don't think this
12:48:09 6 will happen, but it's not outside the realm of possibility.
12:48:14 7 This is an important case. This is important to both of
12:48:18 8 these parties. There are no small insignificant cases that
12:48:23 9 get to trial before a jury in a United States District
12:48:26 10 Court. Just doesn't happen. They don't make it this far.

12:48:29 11 So it is possible that some outside third party
12:48:35 12 might attempt to contact you and influence you about your
12:48:39 13 decisions in this case. I don't think that's likely. But
12:48:42 14 it has happened in the past.

12:48:45 15 If at anywhere between now and the time I've
12:48:47 16 discharged you from jurors after I've accepted your
12:48:51 17 unanimous verdict, if at any time between now and then
12:48:54 18 anybody attempts to communicate with you in the way that
12:48:58 19 you feel uncomfortable with, you feel awkward, you feel
12:49:01 20 it's inappropriate in any way whatsoever, then you should
12:49:05 21 immediately inform Ms. Clendenning, she will advise me, and
12:49:08 22 the Court will deal with it.

12:49:10 23 Again, I don't think it's likely, but it's within
12:49:12 24 the realm of possibility. And so I need to put you on
12:49:16 25 notice about that.

12:49:17 1 Also, ladies and gentlemen, getting back to my
12:49:25 2 first instruction about having a defined and limited
12:49:28 3 universe of information from which to draw upon at the end
12:49:31 4 of this trial.

12:49:32 5 To help facilitate that, I've instructed these
12:49:36 6 lawyers and these parties and all their support staff that
12:49:40 7 if they are to pass you on the front steps or the walkway
12:49:43 8 or in the parking lot or in the hallway or anywhere,
12:49:47 9 they're not to speak to you.

12:49:49 10 So if somebody related to one of these two parties
12:49:54 11 walks right by you one morning, don't think they're being
12:49:57 12 rude. Don't hold it against them. Don't think they're
12:50:00 13 being unfriendly. We are genuinely pretty friendly people
12:50:05 14 in East Texas. And I know when somebody walks right by me
12:50:08 15 and doesn't -- pretends like I'm not there, it can
12:50:14 16 sometimes be offensive.

12:50:16 17 Understand in this case, that's what I've
12:50:18 18 instructed them to do. They're not going to stop and say,
12:50:22 19 good morning. How are you? Did you have a good night?
12:50:25 20 That's a nice suit you're wearing or nice tie or nice dress
12:50:29 21 or whatever, that's not going to happen.

12:50:30 22 And when it doesn't happen, understand that's
12:50:34 23 because I've instructed them and everybody related to this
12:50:35 24 trial, on both sides, not to do.

12:50:37 25 Again, you're not to communicate with anybody in

12:50:39 1 any way that could possibly open the door to having any
12:50:45 2 information before you other than what comes out in the
12:50:48 3 evidence through this trial, the sworn testimony of the
12:50:50 4 witnesses, the admitted exhibits from the Court or the --
12:50:53 5 that the Court has admitted.

12:50:55 6 That's it. So don't hold that against anybody.
12:50:59 7 This is not a huge courthouse. There's certainly larger
12:51:04 8 ones. And it's entirely possible that sometimes between
12:51:07 9 now and the time when we're finished, you'll pass one or
12:51:11 10 more of these people.

12:51:11 11 I suspect you're going to see that gallery almost
12:51:16 12 full of people once we start that trial, and 99 percent of
12:51:19 13 them are going to be associated with the Plaintiff or the
12:51:21 14 Defendant. There are big support staffs that are involved
12:51:23 15 in a trial like this.

12:51:26 16 And there are going to be more than three people
12:51:29 17 on each side of the counsel table, as I told you earlier.
12:51:32 18 It takes a lot of people to try a case like this. But
12:51:35 19 every one of them is not going to visit with you, they're
12:51:37 20 not going to talk to you, they're not going to engage in
12:51:40 21 friendly conversation. And when that happens, just
12:51:42 22 remember, that's because I instructed them not to. It's
12:51:45 23 not because they're being unfriendly. And you're not to
12:51:48 24 hold that against them in any way.

12:51:49 25 Also, ladies and gentlemen, the lawyers during the

12:51:55 1 trial, you're probably going to see smartphones in their
12:51:59 2 hands. You're probably going to see tablets in their
12:52:01 3 hands. You're going to see laptop computers on these
12:52:05 4 tables.

12:52:06 5 There's a lot of electronics that goes into trying
12:52:08 6 a case like this, and they are all more or less the legal
12:52:13 7 pads and pencils of yesteryear brought forward. They are
12:52:18 8 the modern tools which trial lawyers use to try cases and
12:52:21 9 they're entitled to use those, but they're not entitled to
12:52:22 10 disrupt this trial.

12:52:24 11 And everybody outside the jury box is on notice
12:52:26 12 from me that any devices brought into this courtroom have
12:52:30 13 to be silenced. And if that's violated, I'll take direct
12:52:34 14 and appropriate action.

12:52:36 15 However, I'm going to ask each of you if you have
12:52:42 16 a smartphone, if you have a smartwatch, if you have any
12:52:48 17 smart device, I'm going to ask you, if you have it here
12:52:50 18 today, to leave it in the jury room and not bring it back
12:52:53 19 into the courtroom. I'm going to ask you starting tomorrow
12:52:56 20 that you not bring it into the courthouse.

12:53:00 21 Either leave it at home, or if you need to over a
12:53:02 22 lunch break check an email on an important business matter
12:53:05 23 or something personal, go to your car over the lunch break
12:53:08 24 and check it there. But don't bring it into the building.

12:53:10 25 Not only is it a possible disruption, it's also a

12:53:15 1 temptation to do research. Because all those smart
12:53:19 2 devices, be it this small or this small or this small,
12:53:22 3 they're all small computers, they're all connected to the
12:53:27 4 Internet, and it's tempting to do just what I told you not
12:53:31 5 to, and that's research about anything involved in the
12:53:35 6 case.

12:53:35 7 You might hear a word you're not sure of. If
12:53:37 8 you've got a smartphone, during recess, you might be
12:53:41 9 tempted to go online and see if you can get a better
12:53:44 10 definition of that word. That's not proper.

12:53:47 11 So to avoid the temptation, if you have a smart
12:53:50 12 device with you today, phone, watch, tablet, anything like
12:53:53 13 that, leave it in the jury room, and when you come back
12:53:56 14 tomorrow, don't bring it into the courtroom, if you would
12:53:58 15 do that for me, please.

12:53:59 16 Now, with those instructions, your lunch should be
12:54:02 17 waiting for you in the jury room. If you'll take the mask
12:54:05 18 and shields and so forth that you see close by with you,
12:54:09 19 figure those out over the lunch hour, and then when we have
12:54:11 20 you back in here, we'll begin with some additional
12:54:14 21 instructions I need to give you on the record, and then
12:54:18 22 we'll proceed to hear the opening statements from the
12:54:20 23 lawyers in the case.

12:54:20 24 Let me just give you a very, very brief high-level
12:54:25 25 roadmap of how this is going to go.

12:54:27 1 When you come back in from lunch, I'll give you
12:54:30 2 some additional instructions on the law. Then counsel for
12:54:33 3 the Plaintiff will give you opening statement. It's not an
12:54:38 4 opening argument, it's an opening statement to give you an
12:54:41 5 idea of what they expect the evidence is going to show over
12:54:43 6 the course of the trial.

12:54:44 7 Then the Defendant's lawyer will get up and give
12:54:49 8 the Defendant's opening statement. Again, what the
12:54:52 9 Defendant expects the evidence is going to show you over
12:54:54 10 the course of the trial.

12:54:56 11 Then after that, the Plaintiff will put on the
12:54:58 12 Plaintiff's case. It's called the Plaintiff's
12:55:00 13 case-in-chief. And the Plaintiff will call their first
12:55:02 14 witness, and we will go through their witnesses one at a
12:55:05 15 time.

12:55:05 16 And when the Plaintiff is through directly
12:55:08 17 examining each witness, the Defendant will cross-examine
12:55:11 18 those witnesses. And when the Plaintiff has put on all
12:55:15 19 their witnesses, then the Plaintiff will rest their
12:55:19 20 case-in-chief.

12:55:19 21 At that point, the Defendant will come forward and
12:55:23 22 put on their case-in-chief, and they will call their
12:55:25 23 witnesses, and the defense lawyers will directly examine
12:55:28 24 the defense witnesses and the Plaintiff's lawyers will
12:55:31 25 cross-examine the defense witnesses. And when all the

12:55:37 1 defense witnesses have been put on, then the Defendants
12:55:39 2 will rest their case-in-chief.

12:55:41 3 Once the Defendant has rested its case-in-chief,
12:55:45 4 then the Plaintiff has an opportunity, if it chooses to, to
12:55:47 5 call what are known as rebuttal witnesses. And one or more
12:55:51 6 rebuttal witnesses comprise what's called the Plaintiff's
12:55:53 7 rebuttal case. The Plaintiff doesn't have to do that. The
12:55:58 8 Plaintiff has the right to do that.

12:55:59 9 If the Plaintiff calls rebuttal witnesses, then
12:56:02 10 we'll go through the same process of direct examination by
12:56:06 11 the Plaintiff's lawyers and cross-examination by the
12:56:09 12 Defendant's lawyers. And if there's a rebuttal case when
12:56:12 13 the rebuttal witnesses are finished, then the Plaintiff
12:56:14 14 will rest their rebuttal case.

12:56:16 15 If there is no rebuttal case, or when the rebuttal
12:56:19 16 case has been presented and the Plaintiff rests the
12:56:21 17 rebuttal case, then you will have heard all the evidence.

12:56:27 18 And when you've heard all the evidence in this
12:56:29 19 case, I will give you lengthy and detailed instructions on
12:56:32 20 the law that you are to apply. Those are called the
12:56:37 21 Court's final instructions to the jury. They're also
12:56:39 22 sometimes called, and you may have heard them referred to,
12:56:42 23 as the Court's charge to the jury.

12:56:44 24 Once I've given you my charge, my final
12:56:47 25 instructions, then counsel for the Plaintiff will present a

12:56:50 1 closing argument, the Defendant will present a closing
12:56:53 2 argument, and then the Plaintiff gets a final closing
12:56:56 3 argument.

12:56:56 4 The Plaintiff gets to go first because the
12:56:59 5 Plaintiff has the burden of proof. And then once you've
12:57:03 6 heard the closing arguments from both Plaintiff's counsel
12:57:05 7 and defense counsel, then I will instruct you to retire to
12:57:09 8 the jury room, to take the written verdict form with you.

12:57:14 9 And I'm also going to give you your own written
12:57:16 10 copy of the lengthy instructions I'm going to give you
12:57:19 11 orally, and you'll have a written copy for each of the
12:57:22 12 eight of you to look at in the jury room. And you'll take
12:57:26 13 those eight copies of my instructions, the one copy of the
12:57:29 14 written verdict with the questions in it, and you'll take
12:57:31 15 that to the jury room.

12:57:33 16 And you know what, that's when the light switch
12:57:35 17 switches on, and that's when you're required to discuss the
12:57:38 18 evidence you've heard with each other and answer those
12:57:41 19 questions in the verdict form in the best attempt you can
12:57:45 20 muster to give the Court a unanimous answer to each of
12:57:48 21 those questions, because your answers to those questions
12:57:51 22 have to be unanimous.

12:57:52 23 So that's an overview of how it's going to be
12:57:56 24 structured.

12:57:57 25 Also, while we're covering some basic housekeeping

12:58:02 1 matters, let me tell you this. I have learned over my time
12:58:08 2 on the bench, and I believe this, that most folks in this
12:58:11 3 part of the world would rather come early and stay late and
12:58:16 4 be away from home and be away from work a shorter number of
12:58:20 5 days than coming late, going home early, and having a much
12:58:20 6 longer period of time that they're coming back and forth
12:58:27 7 and being away from their homes and their works.

12:58:28 8 Some federal courts in big cities where it takes
12:58:31 9 people a long time to get there start at 10:00 o'clock in
12:58:34 10 the morning, and they quit at 4:00 o'clock in the
12:58:37 11 afternoon. And sometimes in those cases it takes 10 days
12:58:40 12 to what I can do in five days. And I've learned that
12:58:43 13 people in East Texas would rather be gone five days and
12:58:47 14 work a longer day than be gone 10 days and work a shorter
12:58:51 15 day.

12:58:51 16 So we're going to try as best we can to start each
12:58:55 17 day beginning in the morning, because you're already here
12:58:58 18 today, but we're going to start each day beginning in the
12:59:02 19 morning at 8:30. And I'm going to ask you to be assembled
12:59:04 20 in the jury room before 8:30 and ready to go at 8:30, which
12:59:08 21 means you probably need to plan to get to the courthouse
12:59:10 22 here in Marshall about 8:15.

12:59:14 23 And there will be breakfast, snacks provided by
12:59:19 24 the clerk's office each morning for you. And we'll start
12:59:21 25 about 8:30 in the morning. I'm not going to stop at 4:00

12:59:28 1 o'clock. I'm not going to stop at 5:00 o'clock. I'm
12:59:30 2 probably going to stop closer to 6:00 o'clock each day, and
12:59:34 3 then let you be recessed for the day and return to your
12:59:37 4 homes.

12:59:38 5 That's not an exact science. Let me give you an
12:59:43 6 example. If we have a witness on the witness stand who
12:59:45 7 starts at 4:30 and they have two hours of testimony to
12:59:51 8 give, I'm going to try to get that testimony complete and
12:59:56 9 not break it so that I can send you home when that witness
12:59:59 10 finishes.

12:59:59 11 I think it's much easier for you to follow the
01:00:02 12 evidence if we don't break the witnesses between different
01:00:08 13 days, and try to have as compact and succinct a narrative
01:00:14 14 of this case and avoid being disjointed and disjunctive if
01:00:17 15 we can.

01:00:18 16 So we may have a witness that finishes at 5:15 and
01:00:24 17 the next witness is two hours long, and I'm not going to
01:00:26 18 start a two-hour witness at 5:15. So there are days you
01:00:30 19 might be out of here before 6:00 o'clock.

01:00:32 20 There are days you might be out of here at 6:00
01:00:35 21 o'clock or a few minutes after. I'm just going to have to
01:00:38 22 roll with the punches, as they say, and deal with the
01:00:40 23 witnesses that these parties are going to call as a part of
01:00:43 24 their respective cases to be put on.

01:00:45 25 So don't go home thinking that this will be 9:00

01:00:49 1 to 5:00. It will probably be a little longer than that.

01:00:52 2 But I promise you if we do that, I think there's a good
01:00:55 3 chance that we can finish this case this week, at the very
01:00:59 4 outside Monday of next week.

01:01:01 5 If I didn't do it this way, it'd probably take all
01:01:04 6 of next week to finish this case. And to avoid stretching
01:01:09 7 it out over a great number of days -- a greater number of
01:01:12 8 days, I would prefer to do it that way. And over the last
01:01:16 9 10 years, jurors like yourselves have told me they would
01:01:19 10 prefer to do it that way.

01:01:21 11 So I'm not going to take a poll and I'm not going
01:01:24 12 to ask you to vote, but I'm going to tell you based on
01:01:26 13 that, that's what I intend to do. And that way you can
01:01:26 14 have an idea of what to expect, and you can have an idea to
01:01:30 15 let everybody that is at home with you know when to expect
01:01:33 16 you and when not to expect you. I hope that will be
01:01:36 17 helpful to you.

01:01:36 18 All right. With those instructions, ladies and
01:01:39 19 gentlemen, as I say, lunch should be waiting for you in the
01:01:41 20 jury room. It's 1:00 o'clock. We're going to do our best
01:01:47 21 to start back at 1:45. With that, the jury is excused for
01:01:54 22 lunch.

01:01:55 23 COURT SECURITY OFFICER: All rise.

01:01:58 24 (Jury out.)

01:02:24 25 THE COURT: Be seated, please. Who should I

01:02:26 1 expect to present opening statements for the Plaintiff?

01:02:28 2 MR. KLINE: That would be me, Your Honor. Doug

01:02:31 3 Kline.

01:02:31 4 THE COURT: All right. And who should I expect to

01:02:35 5 present opening for the Defendant?

01:02:37 6 MS. SMITH: Mr. Sernel. Marc Sernel.

01:02:40 7 THE COURT: All right. All right, counsel, we'll

01:02:41 8 break for lunch and we will reconvene as close to 1:45 as

01:02:46 9 we can. Are there any questions or issues I need to know

01:02:48 10 about from either Plaintiff or Defendant at this juncture?

01:02:56 11 MR. AROVAS: No, Your Honor.

01:02:56 12 THE COURT: All right. We stand in recess for

01:02:58 13 lunch.

14 (Recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 10/31/2021

3/15/2021
Date